

# **USING TECHNOLOGY FOR ACCESS TO JUSTICE IN GHANA AND CANADA: EXAMINING THE DIGITAL DIVIDE**

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By

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## **ABSTRACT**

Access to justice is a fundamental prerequisite to the full enjoyment of rights. Sadly, the goal of ensuring that the Ghanaian justice system is structured and administered in a manner that equips the people with the knowledge, resources, and services they require to address their legal problems has remained elusive. Many proponents envision technology as a cost-saving tool that infuses the justice system with efficiency and expediency, thus rendering justice easily accessible and fair to all, especially with regard to those otherwise marginalized in the system. However, the digital divide may inhibit this potential from being realized in practice. Towards this end, this thesis assesses the impact of the digital divide on the extent to which technology could or may be used to advance access to justice in Ghana. The assessment shows a potential negative correlation between the digital divide and the diffusion rate of the technologies for access to justice, and a possible supply-usage deficit of the technology-based access to justice initiatives. Consequently, I argue for proactive policies and actions to contract the digital divide gap to increase the diffusion rate of such technologies, and the use of a digital access model for empirical studies on predicting or measuring the prospects of success or failure for technology-based access to justice initiatives. This topic is explored from a Ghanaian and Canadian perspective, with a view to identifying any lessons that could be learned by the former from the latter, or, indeed, vice versa. Canada has gone to great lengths to integrate technology into its justice system and the experience it has gained in the process may provide useful lessons for Ghana in its quest to enhance access to justice with the aid of technology.

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## **DEDICATION**

To my mother, Madam Mary Adjei, whose solid foundation has propelled my progress.

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## **ABBREVIATIONS**

ADR – Alternative Dispute Resolution

BC – British Columbia

CRT – (British Columbia) Civil Resolution Tribunal

CanLII - Canadian Legal Information Institute

CBA – Canadian Bar Association

GhaLII - Ghana Legal Information Institute

ICT – Information and communication technology

IRAC - Issue, rule, analysis and conclusion

NADRAC - Australian National Alternative Dispute Resolution Advisory Council

ODR – Online dispute resolution

OECD – Organization for Economic Co-operation and Development

SCC – Supreme Court of Canada

SCGLR – Supreme Court of Ghana Law Reports

SCR – Canada Supreme Court Reports

## CHAPTER ONE: INTRODUCTION

### 1.1 Introduction

Access to justice is a prerequisite for the full enjoyment of fundamental human rights.<sup>1</sup> However, the goal of ensuring that the Ghanaian justice system is structured and administered in a manner that provides its citizens and residents with the knowledge, resources, and services they require to address their legal problems has unfortunately remained elusive. The problem stems from the alienation and exclusion of many individuals from the system, due to challenges that include difficulties in accessing legal information; physical and material barriers to accessing institutions of justice; the prohibitive cost of legal proceedings; weak and inadequate legal aid to enable less affluent members of society to access justice, and poor co-ordination between the various institutions of justice.<sup>2</sup> Many proponents envision technology, especially web-based legal information, videoconferencing, and online dispute resolution, as providing significant opportunities for facilitating access to justice by ensuring that this access is fair for all, with special consideration for individuals who may be disadvantaged due to a lack of resources.<sup>3</sup> Consequently, in Ghana, a legal and institutional framework is being developed in the above

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<sup>1</sup> See *Adofo v Attorney-General* [2005-2006] SCGLR 42; *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 SCR 31 [*Trial Lawyers*].

<sup>2</sup> See generally Divyansha Sehgal, “Chief Justice of Ghana discusses Women’s Access to Justice” *The Cornell Daily Sun* (21 April 2015), online: [www.lawschool.cornell.edu/womenandjustice/About-Us/upload/Cornell-Daily-Sun-Chief-Justice-of-Ghana-Discusses-Women-s-Access-to-Justice.pdf](http://www.lawschool.cornell.edu/womenandjustice/About-Us/upload/Cornell-Daily-Sun-Chief-Justice-of-Ghana-Discusses-Women-s-Access-to-Justice.pdf); Raymond A. Atuguba, Kissi Agyebeng & Enyonam Dedey, “Access to Justice in Ghana: The Real Issues”, (December 2006) at 25 – 26, online: [www.ladagroupgh.com/docs/5854320d48f0ed75317469e0d04679eeAccess%20to%20Justice%20In%20Ghana%20-%20The%20Real%20Issues.pdf](http://www.ladagroupgh.com/docs/5854320d48f0ed75317469e0d04679eeAccess%20to%20Justice%20In%20Ghana%20-%20The%20Real%20Issues.pdf) [Atuguba, Agyebeng & Dedey, “Access to Justice in Ghana”].

<sup>3</sup> Referencing existing scholarship and empirical studies on technology-based access to justice initiatives, Bailey, Burkell & Reynolds identified web-based legal information, videoconferencing, and e-filing as actual or potential facilitators of access to justice. (See Jane Bailey, Jacquelyn Burkell & Graham Reynolds, “Access to Justice for All: Towards an “Expansive Vision” of Justice and Technology” (2013) 31 Windsor YB Access Just 181). However, in examining the use of technology for access to justice, this thesis will focus on web-based legal information, videoconferencing, and online dispute resolution (ODR) as a substitute for e-filing. Though e-filing may be a potential contributor to promoting access to justice in Ghana and Canada, ODR arguably presents more numerous opportunities for access to justice (See e.g. Ijeoma Ononogbu, “Online Dispute Resolution in Africa: Present Realities and the Way Forward” in Ernest Uwazie, ed, *Alternative Dispute Resolution and Peace-building in Africa* (Newcastle upon Tyne, UK: Cambridge Scholars Publishing, 2014) at 73 – 94; Shannon Salter & Darin Thompson, “Public-Centred Civil Justice Redesign: a case study of the British Columbia Civil Resolution Tribunal” (2016-2017) 3 McGill J Dispute Resolution 113).

context, in order to harness the efficiency and expediency of modern technological innovations, specifically Web-based legal information, videoconferencing, and online dispute resolution (ODR).<sup>4</sup>

There have been significant discussions about access to justice in Ghana.<sup>5</sup> However, these have not yet fully engaged with the implications of the digital divide on technology-based access to justice initiatives. This thesis aims to fill that void, examining the extent to which Web-based legal information, videoconferencing, and ODR could or may be used to advance access to justice in Ghana. It will focus on the potential of these technologies to facilitate access to justice, as well as the extent to which the digital divide can affect this potential from being realized in practice.

The negatives of a broad digital divide in technology-based access to justice initiatives are dramatic as people who do not have access to or the ability to use digital devices and functionality will be effectively shut out of such initiatives.<sup>6</sup> It is imperative that government policies and programmes on access to justice and technology design proactive measures to forestall the repercussions of the digital divide on technology-based access to justice initiatives. The overwhelming majority of government policies and programmes have been dedicated to investigating and addressing the inequitable physical and material access to computers and the Internet, with the underlying assumption that increasing access to computers and the Internet promotes inclusion.<sup>7</sup> However, the reality is that the digital divide is not just about access to the Internet.<sup>8</sup> The digital divide is a multifaceted phenomenon which defines the gap between those who are empowered to substantially participate in an information and knowledge-based society and economy, and those who are not.<sup>9</sup> Recent studies have found that the digital divide are plural

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<sup>4</sup> See e.g. *Alternative Dispute Resolution Act*, 2010 (Act 798); *High Court (Civil Procedure) (Amendment) Rules*, 2014 (CI 87), Order 38 r 3A, Order 41 r 2A; Ghana Legal Information Institute [ghalii.org/](http://ghalii.org/).

<sup>5</sup> See e.g. Atuguba, Agyebeng & Dedey, “Access to Justice in Ghana”, *supra* note 2 at 30 – 34 (enlisting writings on access to justice in Ghana); Richard C. Cook, “Access to Justice and Land Disputes in Ghana’s State Courts: The Litigants’ Perspective” (2004) *J Legal Pluralism* 1.

<sup>6</sup> Julia R. Gordon, “Legal Services and The Digital Divide” (2001) *12 Alb LJ Sci & Tech* 809 at 810.

<sup>7</sup> See generally Alexander J. A. M. van Deursen & Jan A. G. M. van Dijk, “Toward a Multifaceted Model of Internet Access for Understanding Digital Divides: An Empirical Investigation” (2015) *31 The Information Society* 379 at 379.

<sup>8</sup> Julia R. Gordon, “Legal Services and The Digital Divide” (2001) *12 Alb LJ Sci & Tech* 809 at 810.

<sup>9</sup> eEurope Advisory Group, *E-Inclusion: New Challenges and Policy Recommendations* (July 2005) at 7, online: The Knowledge Society Agency (UMIC) [www.unic.pt/images/stories/publicacoes/kaplan\\_report\\_einclusion\\_final\\_version.pdf](http://www.unic.pt/images/stories/publicacoes/kaplan_report_einclusion_final_version.pdf).

and originate from the constellation of interconnected access and usage variables, including motivational access, physical and material access, literacy access, and usage access which define the prerequisites for the appropriation of a digital technology.<sup>10</sup> Consequently, a framework resulting from these variables can serve as a useful tool for analysing the extent to which technology-based access to justice initiatives can diffuse or has diffused into the justice systems in Ghana to advance access to justice. Towards this end, this thesis surveys the literature to generate a framework for such analysis. The thesis argues that without proactive policies and actions to address the inequalities in the above variables of digital access, the access to justice problem may worsen.

This thesis studies the subject outlined above from a Ghanaian and a Canadian perspective, with a view to identifying any lessons that could be learned by Ghana from the latter and, indeed, vice versa. It studies public, legal, and government structures, and academic work relevant to access to justice, technology and the digital divide in the above-mentioned countries. Although the focus is primarily on these two nations, relevant materials from other jurisdictions will also be studied.

My explanation for studying the topic from a Ghanaian and Canadian perspective is twofold. Firstly, Ghana face similar access to justice challenges to Canada, and the governments and justice institutions in both countries have developed or are developing the legal and institutional framework to accommodate technology to facilitate access to justice. However, and secondly, compared to Ghana, Canadian federal and provincial governments and justice institutions have gone to great lengths to use technology as a means of assisting access to justice. They have implemented proactive measures to leverage technology for this purpose, while at the same time addressing various challenges accompanying the use of technology for access to justice.<sup>11</sup> Of

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<sup>10</sup> See David J. Gunkel, "Second thoughts: toward a critique of the digital divide" (2003) 5:4 New Media & Society 499 at 504; Jan A. G. M. van Dijk, *The Deepening Divide: Inequality in the Information Society* (Thousand Oaks, California: SAGE Publications, 2005) [van Dijk, *The Deepening Divide*]; van Deursen & van Dijk, *supra* note 7; J. A. M. van Deursen, et al, "The Compoundness and Sequentiality of Digital Inequality" (2017) 11 Intl J Communication 452; Shahla Ghobadi & Zahra Ghobadi, "How Access Gaps Interact and Shape Digital Divide: A Cognitive Investigation" (2015) 34:4 Behaviour & Information Technology 330; Alcides Velasquez, "Digital Divide in Colombia: The Role of Motivational and Material Access in the Use and Types of Use of ICTs" (2013) 7 Intl J Communication 1768; David R Brake, "Are We All Online Content Creators Now? Web 2.0 and Digital Divides" (2014) 19 J Computer-Mediated Communication 591.

<sup>11</sup> See e.g. Action Committee on Access to Justice in Civil and Family Matters, "Report of the Access to Legal Services Working Group" (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, April 2013), online: Canadian Forum on Civil Justice [www.cfcj-](http://www.cfcj-)

particular interest is the impact of the digital divide on initiatives to promote technology-based access to justice.<sup>12</sup> The mechanisms being integrated to harness the benefits of technology in Canada, while ameliorating the disadvantages of the digital divide for access to justice, may provide useful lessons for Ghana in its quest to use technology as a means of enhancing the system administering justice.

Towards this end, the present thesis is organized into six chapters. Chapters One and Two lay down the roadmap, providing an overview of how technology can or already has diffused justice systems in Ghana and Canada, in a bid to promote access. Chapter One introduces the scope of access to justice as addressed in this thesis and the common barriers to justice, i.e. informational barriers, financial barriers, and physical and material barriers. Chapter Two reviews the literature on the digital divide from the perspective of communication and information science, in order to identify the variables that account for the inequalities in digital access and to generate a framework for an analysis of the enabling environment for technology in Ghana and Canada. The thesis argues for the framework as a potential device for measuring the extent to which technology-based access to justice initiatives can diffuse into the justice systems in Ghana and Canada to promote access to justice. To substantiate the potential of the digital access framework for such analysis, I employ the framework to analyse the extent to which Web-based legal information, Online Dispute Resolution and videoconferencing can diffuse into the justice systems in the above countries to promote access to justice. There I found a potential negative correlation between the digital divide and the technology-based access to justice initiatives. My analysis also reveals a possible supply-usage deficit of the technology-based access to justice initiatives. Consequently, Chapters Three, Four, and Five offer recommendations, including those from a Canadian perspective, to increase the diffusion rate of the technologies and lessen the supply-usage deficit. Chapter Six is a discussion of possible recommendations and policy considerations.

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[fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Access%20to%20Legal%20Services%20Working%20Group.pdf](http://fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Access%20to%20Legal%20Services%20Working%20Group.pdf); Action Committee on Access to Justice in Civil and Family Matters, “Report of the Court Processes Simplification Working Group”, online: Canadian Forum on Civil Justice [www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Court%20Processes%20Simplification%20Working%20Group.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Court%20Processes%20Simplification%20Working%20Group.pdf).

<sup>12</sup> See e.g. The Action Group on Access to Justice, “Technology, Inclusion and Access to Justice: Broadening the Conversation” (November 7, 2016), online: [theactiongroup.ca/2016/11/event-review-technology-inclusion-and-access-to-justice-broadening-the-conversation/](http://theactiongroup.ca/2016/11/event-review-technology-inclusion-and-access-to-justice-broadening-the-conversation/); Sherry MacLennan, “Empowerment, Technology, and Family Law” in Karim Benyekhlef et al, *eAccess to Justice* (Canada: University of Ottawa Press, 2016) at 199 – 202.

## 1.2 Access to Justice in Ghana and Canada: Its Scope and Challenges

### 1.2.1 The Scope of Access to Justice

Access to justice is a contested concept with an unsettled or evolving meaning, and it is an ideal that can be achieved in a number of ways. In very broad terms, it refers to the provision of the kind of life – and the kinds of communities in which – people would like to live. It is about accessing equality, understanding, education, health, food, housing, security, happiness, et cetera.<sup>13</sup> I however argue that the concept can be dichotomized as ‘access’ and ‘justice’, where ‘access’ involves the means or the pathways to justice, and ‘justice’ refers to the ends or the objectives of the concept – the pathways must lead to results that are individually and socially just.<sup>14</sup> My focus here is the access component within a legal system – the system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the state.<sup>15</sup> I will however bear in mind the justice component. In fact, as Cappelletti & Garth opined, justice presupposes effective access.<sup>16</sup>

People will have access to justice when empowered with the “knowledge, resources and services” they need to deal effectively with their legal matters to achieve the good life they want to live.<sup>17</sup> I argue the “knowledge, resources, and services” conception as the means or the pathways to justice, which include: (i) awareness of rights, entitlements, obligations and responsibilities; (ii) awareness of ways to avoid or prevent legal problems; (iii) the ability to effectively participate in negotiations so as to achieve a just outcome, and (iv) the ability to effectively utilize both court and non-court dispute resolution systems and procedures.<sup>18</sup> This expansive scope of access fits into the growing literature on access to justice, which argues that

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<sup>13</sup> Trevor CW Farrow, “What is Access to Justice?” (2014) 51 Osgoode Hall LJ 957 at 983. See also Atuguba, Agyepong & Dedey, “Access to Justice in Ghana”, *supra* note 2 at 4.

<sup>14</sup> See generally Mauro Cappelletti & Bryant Garth, eds, *Access to Justice: A World Survey*, Vol I (Milan: Sitjoff and Noordhoff - Alphenaaandenrijn, 1978) at 6.

<sup>15</sup> Mauro Cappelletti & Bryant Garth, eds, *Access to Justice: A World Survey*, Vol I (Milan: Sitjoff and Noordhoff - Alphenaaandenrijn, 1978) at 6. For discussion on the justice component of the concept, see e.g. William E. Conklin, “Whither Justice? The Common Problematic of Five Models of “Access to Justice”” (2001) 19 Windsor Y.B. Access Just 297.

<sup>16</sup> Mauro Cappelletti & Bryant Garth, eds, *Access to Justice: A World Survey*, Vol I (Milan: Sitjoff and Noordhoff - Alphenaaandenrijn, 1978) at 6.

<sup>17</sup> The Honourable Thomas A. Cromwell, “Access to Justice: Towards a Collaborative and Strategic Approach” (2012) 63 UNBLJ 38 at 39. See also Brent Cotter, “Thoughts on a Coordinated and Comprehensive Approach to Access to Justice in Canada” (2012) 63 UNBLJ 54 at 54 – 55.

<sup>18</sup> Action Committee, “Report of the Access to Legal Services Working Group”, *supra* note 11 at 5 – 6.

access to justice strategies should embrace mechanisms for educating the public about their rights, entitlements, obligations and responsibilities – *legal health promotion*; preventing disagreements from arising in the first place – *dispute avoidance*; preventing disagreement from crystalizing into legal problems – *dispute management*, and resolving legal problems through formal dispute resolution mechanisms – *adjudication*.<sup>19</sup> In the remainder of this thesis, I refer to legal health promotion, dispute avoidance, dispute management, and adjudication as the pathways to justice; they are not ends in themselves, but rather steps along the path to justice.

These pathways to justice indicate a cultural shift from the court-centric approach to a broad range of mechanisms for avoiding, managing and resolving legal problems and disputes. Although formal adjudication is important, legal health promotion, dispute avoidance and dispute management also provide diverse means of addressing such issues. For instance, legal health promotion enhances access to justice by ensuring that the public are aware of the many benefits, improvements and advantages that the law can offer them in their daily lives. It can also help them take advantage of these, even if no legal problem has arisen.<sup>20</sup> Meanwhile, mechanisms for dispute avoidance promote an understanding of ways to prevent legal problems.<sup>21</sup> Additionally, mechanisms for dispute management will help people to resolve any misunderstandings before they escalate excessively or crystallize into a legal problem.<sup>22</sup> Finally, adjudication is necessary in all access to justice initiatives, as there is no way of completely excluding the possibility of problems from occurring.<sup>23</sup> Legal health promotion, dispute avoidance, dispute management and adjudication consequently provide a better balance of access to justice, aimed at prevention, management and resolution.

Nevertheless, the goal of ensuring an expansive justice system remains largely theoretical rather than practical, as a considerable number of Ghanaians and Canadians still experience significant

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<sup>19</sup> See Richard Susskind, *Tomorrow's Lawyer: An Introduction to Your Future* (Oxford, UK: Oxford University Press, 2013) at 85 – 86; Action Committee on Access to Justice in Civil and Family Matter, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, April 2013) at 2; CBA Access to Justice Committee, *Reaching Equal Justice: An Invitation to Envision and Act* (Ottawa: Canadian Bar Association, 2013) at 64; Roderick A. Macdonald, "Access to Justice in Canada Today: Scope, Scale and Ambitions" in Julia Bass, W. A. Bogart & Frederick H. Zemans, eds, *Access to Justice for a New Century: The Way Forward* (Toronto: Law Society of Upper Canada, 2005) at 20 – 23.

<sup>20</sup> Susskind, *supra* note 19.

<sup>21</sup> Action Committee, *A Roadmap for Change*, *supra* note 19 at 2.

<sup>22</sup> Susskind, *supra* note 19 at 86; Roderick A. Macdonald, "Access to Justice in Canada Today" in Bass, Bogart & Zemans, *supra* note 19 at 22.

<sup>23</sup> CBA, *Equal Justice*, *supra* note 19 at 64.

challenges in accessing justice due to factors that include informational, financial, physical and material barriers.<sup>24</sup>

### 1.2.2 Access to Justice Challenges

#### i. Informational Barriers

*Ghana:* The Ghanaian justice system is entangled with various issues that inhibit access to the kind of legal information that will enable its citizens and residents to make informed decisions about their legal matters. At the same time, legal service providers, such as the courts, legal aid organizations, lawyers, and public legal education and information organizations also face significant barriers to accessing case reports and legislation that would enable them to effectively discharge their duties. This is despite the fact that the State has instituted various mechanisms for sharing legal information with the public. For example, these include community outreach, lectures, symposia, television and FM radio stations, print media, the Gazette (Ghana's official law journal) and the Internet.<sup>25</sup> These mechanisms have worked together to promote access to legal information in Ghana, but many citizens and residents are still unaware of their rights, responsibilities and of the services available to assist them in resolving their legal issues through formal or informal dispute resolution mechanisms.<sup>26</sup>

In fact, most Ghanaians (including lawyers and paralegals) do not have difficulty in obtaining statutory materials that will enable them to make informed decisions. Legislation is rarely within the reach of the majority of Ghanaians. Moreover, in many African countries, the official law Gazettes are hardly published and print circulation is frequently so low that even government libraries are unable to purchase copies or maintain comprehensive collections.<sup>27</sup> This problem prevents the general population from making informed decisions about legal matters, as they do

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<sup>24</sup> See Sehgal, *supra* note 2; Suzanne Bouclin, Jena McGill & Amy Salyzyn, "Mobile and Web-Based Legal Apps: Opportunities, Risks and Information Gaps" CJLT [Forthcoming in Fall 2017].

<sup>25</sup> See generally Cletus D Kuunifaa, "Access to Information Legislation as a Means to Achieve Transparency in Ghanaian Governance: Lessons from the Jamaican Experience" (2012) 38:2 IFLA J 175 at 181.

<sup>26</sup> See Sehgal, *supra* note 2.

<sup>27</sup> Mariya Badeva-Bright & Dr Oluwatoyin Badejogbin "Free Access to The Law in Africa" in Southern Africa Litigation Centre, Judiciary of Malawi & National Association of Women Judges and Magistrates of Botswana, *Goal 16 of the Sustainable Development Goals: Perspectives from Judges and Lawyers in Southern Africa on Promoting Rule of Law and Equal Access to Justice* (Johannesburg, South Africa: Southern Africa Litigation Centre, 2016) at 148.



not have access to the corresponding legislation. The seriousness of the problem came to bear in *Mensah v The Chairman, Electoral Commission and Others*, where the Supreme Court of Ghana (the highest judicial body in the country) resisted issuing a judgment *per incuriam* on an electoral matter, because the Court was not privy to an existing or binding legislation.<sup>28</sup> The Court held that:

[T]he central problem posed at the commencement of this judgment remained unanswered. We have nonetheless taken all precautions to avoid rendering a judgment *per incuriam* in case there is some supporting legislation the parties are unaware of. We noted that in the parliamentary Hansard debates relating to the District Electoral Areas and Designation of Units Instrument, 2014, C.I. 85 then pending before Parliament, there was reference to a C.I. 78 which it was contended, could before the coming into force of C.I. 85 govern the commencement of the upcoming District Level Elections slated for 3/3/2015. The reference to the said C.I. 78 proved illusory as its existence cannot be fathomed. This mysterious legislation is not even listed in the manual of the Electoral Commission entitled Electoral Laws.<sup>29</sup>

This case exemplifies the nature of the problem of access to legal information in Ghana.

The problem also extends to accessing court judgments. In 1972, the Council for Law Reporting Act established the Council for Law Reporting, charged with “responsibility for the preparation and publication of the ‘Ghana Law Reports’ containing the judgments, rulings and opinions of the Superior Courts of Judicature”.<sup>30</sup> Unfortunately, the underpinning purpose of establishing the Council – to improve the frequency of publication of court judgments – has not fully materialized, since the necessary resources have not been made available over the years.<sup>31</sup> As Quansah, a professor of law at a renowned law school in Ghana states: “the history of law reporting in Ghana has been, to say the least, sporadic. It was described some years ago as pathetic and the situation has since not improved to any significant extent.”<sup>32</sup>

The inability of the Council to consistently publish adequate reports on court judgments is attributable to the cost of expertise required for the manual printing and compilation of these,

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<sup>28</sup> *Mensah v The Chairman, Electoral Commission and Others* (27 February 2015), JI/11/2015 (SC).

<sup>29</sup> *Ibid.*

<sup>30</sup> *Council for Law Reporting Act*, 1972 (NRCD 64), s 2.

<sup>31</sup> Emmanuel Kwabena Quansah, *The Ghana Legal System* (Accra, Ghana: Black Mask Limited, 2011) at 169.

<sup>32</sup> Emmanuel Kwabena Quansah, *The Ghana Legal System* (Accra, Ghana: Black Mask Limited, 2011) at 168 [Footnote omitted].

which often exceeds the budget allocated to funding the administration of justice.<sup>33</sup> Manual printing and publication is generally expensive, time-consuming and requires substantial human and material resources. Nevertheless, limited access to legislation and court decisions has had dire consequences for the proper administration of justice in Ghana. Even judges, particularly those in the lower courts, do not have access to binding legislation and judgments. This then paves the way for corruption in the judiciary, as judges can rule as ‘silos’, issuing their own unchecked opinions.<sup>34</sup> Moreover, many lawyers, especially junior lawyers, cannot prepare a well-informed statement of a case or argument; neither can they offer proper legal advice to their clients without knowledge of legislation and previous court decisions.<sup>35</sup> Limited access to legislation and judgments also disempowers the public from making informed decisions. Public legal education and information organizations such as the Commission of Human Rights and Administrative Justice and the Legal Resources Centre, volunteers, advocates, family members and friends are not adequately equipped to educate others about their rights and the legal system, without access to up-to-date legislation and court decisions. Hence, there is a pressing need for proactive policies and actions to address this problem. Indeed, technology presents advanced opportunities for such initiatives.

*Canada:* Although there have been significant advancements to ensure access to legal information, especially with the introduction of new technologies such as the Internet, adequate access to legal information remains a challenge in Canada.<sup>36</sup> The exponential growth of legal materials, coupled with the multiplicity of practice directions and substantive law, which is often obscure and uncertain, are among the major barriers to accessing legal information in Canada.<sup>37</sup> This problem poses an immense challenge to accessing legal information in the case of lawyers and non-lawyers alike. To ameliorate the problem, especially for non-lawyers, a variety of actors

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<sup>33</sup> This is a problem in most developing countries, including Ghana. See Jay Milbrandt & Mark Reinhardt “Access Denied: Does Inaccessible Law Violate Human Rights?” (2012) 9 Regent J Intl L 55 at 61.

<sup>34</sup> *Ibid* at 65

<sup>35</sup> See AfriMAP, The Open Society Initiative for West Africa & The Institute for Democratic Governance, “Ghana Justice Sector and the Rule of Law: A Discussion Paper” (The Open Society Initiative for West Africa, 2007) at 12; Jay Milbrandt & Mark Reinhardt “Access Denied: Does Inaccessible Law Violate Human Rights?” (2012) 9 Regent J Intl L 55 at 65.

<sup>36</sup> See Theodore John Tjaden, *Access to Law-Related Information in Canadian the Digital Age* (LLM Thesis, University of Toronto Faculty of Law, 2005); Max David King, “Free and Open Access to Legal Resources Through CanLII” (2013) 38 Can L Libr Rev 18; Action Committee, *A Roadmap for Change*, *supra* note 19 at 4; CBA, *Equal Justice*, *supra* note 19 at 34.

<sup>37</sup> CBA, *Equal Justice*, *supra* note 19 at 49.

(including law societies, legal aid plans, public legal education and information organizations, law foundations, governments and community agencies) have produced a wide variety of ‘justice-related information’ aiming to help the public understand their rights and how to exercise them. In these ways, the public are informed of their rights and the necessary steps are explained to help them resolve their problems.<sup>38</sup>

The policy of supplementing legislation and written judgments with justice-related information advances access to justice and the rule of law, as it empowers the public with knowledge of the legal system and their legal rights (including knowledge of the resources and services available to assist them in exercising these rights). Public legal education and information organizations such as the Community Legal Education Ontario, the Justice Education Society of British Columbia, and the Public Legal Education Association of Saskatchewan have significantly contributed to access to justice in Canada, as they have helped many Canadians understand and exercise their legal rights.<sup>39</sup> Be that as it may, informational barriers persist and many Canadians take no meaningful action with respect to their legal problems. This is because they imagine that nothing can be done, are unaware of the resources available to support them, are uncertain of their rights, or simply do not know how to proceed.<sup>40</sup>

The inequality in the geographical distribution of legal information providers has also resulted in limited or ineffective access to their services in real terms, especially in rural communities.<sup>41</sup> Here, the proliferation of information sources has ironically limited meaningful access. There is little or no coordination of either the content, or the way in which the public can access justice-related information.<sup>42</sup> Respondents in a 2013 study on the experiences of self-represented

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<sup>38</sup> See Elena Haba, “Selected Inventory of Initiatives to Improve Access to Justice for the Middle Class: A Working Paper for Underexplored Alternatives for the Middle Class” (Ottawa: Canadian Bar Association, 2013) at 9 – 22. The Canadian Action Committee on Access to Justice in Civil and Family Matters (“Action Committee”) uses the concept ‘justice-related information’ to describe legal information on the rights of individuals and the steps that they can take to resolve a problem. See Action Committee, “Report of the Access to Legal Services Working Group”, *supra* note 11 at 5 – 6.

<sup>39</sup> See Patricia Byrne, “Public Legal Education and Information Formats and Delivery Channels” (Legal Services Society & Law Foundation of British Columbia, 2014), online: Legal Aid British Columbia [legalaids.bc.ca/assets/aboutUs/reports/PLEI/pleiFormatsAndDeliveryChannelsJuly2014.pdf](http://legalaids.bc.ca/assets/aboutUs/reports/PLEI/pleiFormatsAndDeliveryChannelsJuly2014.pdf).

<sup>40</sup> See Action Committee, *A Roadmap for Change*, *supra* note 19 at 4; CBA, *Equal Justice*, *supra* note 19 at 34.

<sup>41</sup> See Karen Cohl & George Thomson, “Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services” (Toronto: Law Foundation of Ontario, 2008) at 32; Nicole Aylwin & Lisa Moore, “Rural & Remote Access to Justice: A Literature Review” (Toronto, Ontario: Canadian Forum for Civil Justice, November 2015) at 32 – 37.

<sup>42</sup> See Action Committee, “Report of the Access to Legal Services Working Group”, *supra* note 11 at 6.

litigants in Ontario, British Columbia and Alberta identified the emphasis on substantive information and an absence of information on practical tasks like filing or serving and advice on negotiation as a significant weakness of the sources of legal information. The respondents also bemoaned that most of these sources often directed them to other sites (sometimes with broken links) with inconsistent information, and multiplicity of sites with no means of differentiating which is the most 'legitimate'.<sup>43</sup>

Hence, although there are several sources of legal information in Canada, many of these lack quality content. The piecemeal content of much of the legal information available via these numerous channels negates their impact on access to justice in the country.

## ii. Financial Barriers

*Ghana:* The goal of ensuring that the Ghanaian justice system is structured and administered in a manner that provides citizens and residents with affordable access to appropriate institutions and services, through which they can claim and protect their rights, remains somewhat remote. For example, the prohibitive cost of court services and attorneys' fees constitute a major barrier to justice.<sup>44</sup>

An attorney's initial consultation fee ranges from GH¢500 (US\$119.12) to GH¢1000 (US\$238.23) for Ghanaian clients and US\$250 to US\$1,000 for international clients. The attorney may then charge hourly rates of GH¢300 (US\$71.47) to GH¢2,000 (US\$476.46) for Ghanaian clients and US\$250 to US\$1,000 for international clients, in the case of an extended initial consultation.<sup>45</sup> In addition to these expenses, clients are responsible for all costs and out-of-pocket expenses incurred in the processing of court documents and services, as well as lawyers' travel expenses.<sup>46</sup> With around 6.9 million of its population living below the poverty

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<sup>43</sup> Julie Macfarlane, "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants" (2013) at 10, online: National Self-Represented Litigants Project (NSRLP) [representingyourselfcanada.com/wp-content/uploads/2015/07/nsrlp-srl-research-study-final-report.pdf](http://representingyourselfcanada.com/wp-content/uploads/2015/07/nsrlp-srl-research-study-final-report.pdf).

<sup>44</sup> See Sehgal, *supra* note 2; Atuguba, Agyebeng & Dedey, "Access to Justice in Ghana", *supra* note 2 at 14.

<sup>45</sup> These hourly rates were adopted by the Ghana Bar Association at their mid-year review conference on 9<sup>th</sup> April 2015. See Ghana Bar Association, "Scale of Fees", online: General Legal Council [glc.gov.gh/wp-content/uploads/2015/09/GBA-SCALE-OF-FEES-2015-FINAL.pdf](http://glc.gov.gh/wp-content/uploads/2015/09/GBA-SCALE-OF-FEES-2015-FINAL.pdf).

<sup>46</sup> *Ibid.*

line<sup>47</sup> and a GDP per capita of GH¢5,786.99 (US\$1369.701),<sup>48</sup> it may be reasonably assumed that many legal problems and disputes will not reach the formal justice system; while other individuals will choose or be obliged to represent themselves in court, as the cost of legal services and court fees will require too great a proportion of their income.<sup>49</sup> In such cases, the only available option is usually the Ghana Legal Aid Scheme.<sup>50</sup>

Sadly, there is weak and inadequate legal aid for rendering justice accessible to low- and middle-income earners in Ghana, as the Ghana Legal Aid Scheme is financially and logistically constrained. Over the years, the government has failed to release funds for legal aid programmes.<sup>51</sup> This situation has reduced the Scheme's efficiency. For instance, the problem has limited the Scheme's *mandatory* interventions to instances where a person may face a death penalty or life imprisonment.<sup>52</sup> The Scheme is also understaffed, especially in terms of lawyers. It currently employs 16 lawyers,<sup>53</sup> representing 0.75% of the nation's 2,134 lawyers<sup>54</sup> and serving approximately 6.9 million of the total population below the poverty line.<sup>55</sup> In addition, since its establishment in 1997, the Scheme has only been able to establish 22 district offices,<sup>56</sup> representing 10% of the country's 216 districts.<sup>57</sup> As a result, there is now a lawyer-client deficit. Meanwhile, a huge financial burden is incurred by the government catering for the travel expenses of city-based legal aid lawyers attending courts outside the parameters of the legal aid

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<sup>47</sup> The share of the total population (i.e. 27.4million) below the poverty line is 25.2% (i.e. 6.9 million). See United Nations Development Programme (UNDP), "National Human Development Report, 2015: Ghana" (2016) at 7, online: UNDP [hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/GHA.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/GHA.pdf).

<sup>48</sup> World Bank, "GDP per capita: Ghana (2016)", online:

[data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2015&locations=GH&start=1960&view=chart](http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2015&locations=GH&start=1960&view=chart).

<sup>49</sup> The nature of the problem is evident in the growing demand for legal aid benefits and a call on the Ghana Bar Association to provide more pro-bono services. *Bako-Alhassan v Attorney-General* (24 April 2013), J1/22/2012 (SC), Dotse JSC ("[t]he time has also come for the Ghana Bar Association to initiate some form of mandatory Pro-Bono Legal Service for each legal year as happens in some states of the US").

<sup>50</sup> The *Legal Aid Scheme Act*, 1997 (Act 542) established the Legal Aid Scheme to provide legal aid services in civil and criminal matters involving a person who earns below the Government minimum wage.

<sup>51</sup> See Kofi Ayim, "Legal Aid Scheme in Ghana Underfunded – Justice Atuguba Decries" *Amandla* (24 March 2013), online: [www.danquahinstitute.org/docs/amandla-newspaper-march2013.pdf](http://www.danquahinstitute.org/docs/amandla-newspaper-march2013.pdf).

<sup>52</sup> Atuguba, Agyebeng & Dedey, "Access to Justice in Ghana", *supra* note 2 at 15 [emphasis in original].

<sup>53</sup> "National Lawyers List", online: [www.legalaidghana.org/web/index.php/contact-us/lawyers](http://www.legalaidghana.org/web/index.php/contact-us/lawyers).

<sup>54</sup> "Lawyers in Good Standing", online: General Legal Council [www.glc.gov.gh/lawyers-in-good-standing/](http://www.glc.gov.gh/lawyers-in-good-standing/).

<sup>55</sup> The share of the total population (i.e. 27.4million) below the poverty line is 25.2% (i.e. 6.9 million). See United Nations Development Programme (UNDP), "National Human Development Report, 2015: Ghana" (2016) at 7, online: [hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/GHA.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/GHA.pdf).

<sup>56</sup> Ghana, Legal Aid Scheme, Annual Report from Regional & District Offices: Statistics for 2016, (December 2016), online: [www.legalaidghana.org/web/index.php/gallery/reports/2016](http://www.legalaidghana.org/web/index.php/gallery/reports/2016).

<sup>57</sup> Ghana Local Government Service, *2015 Annual Progress Report*, (March 2016), at Appendix 1, online: [lgs.gov.gh/annual-report/](http://lgs.gov.gh/annual-report/).

offices. The unequal distribution of legal aid offices and the lawyer-client deficit problem cause many legal aid applicants to travel long distances to these offices and unfortunately wait for long periods to meet a lawyer.

*Canada:* The prohibitive cost of litigation also constitutes a major barrier to justice in Canada.<sup>58</sup> Most Canadian citizens and residents do not have access to court or attorney services, due to their unaffordable cost. In its 2013 Report, the Action Committee reported that many Canadians identified cost – or at least perceived cost – as the reason for not seeking legal assistance.<sup>59</sup> Moreover, a survey conducted in the Greater Toronto Area also revealed that most of the interviewees perceived the justice system as inaccessible for many, but mainly available for the rich.<sup>60</sup> In the words of one interviewee, “People with money have access to more justice than people without”.<sup>61</sup>

The 2015 survey conducted by the magazine, *Canadian Lawyer*, as one of its annual ‘Going Rate’ surveys – these being the best-known data source for time-based billing rates in Canada - affirms this problem. It revealed that the national average hourly rate for lawyers’ fees ranged from \$211 to \$448. Clients were also obliged to bear the additional cost of court services. The survey indicated that the average legal fees for a civil action up to trial ranged from \$16,442 to \$48,975 (two days); \$37,296 to \$101,823 for a civil action up to trial (five days), and \$55,186 to \$127,843 for a civil action up to trial (seven days). Additionally, the average legal fees for alternative dispute resolution (ADR), including mediation (up to three days) ranged from \$13,900 to \$25,388.<sup>62</sup> Those seeking justice also bore additional out-of-pocket costs for ancillary matters, including process-serving, photocopying, the cost of transportation to court and non-legal expertise, such as child custody evaluations.<sup>63</sup>

With a GDP per capita of US\$43,248. 53 (57,989.79 CAD),<sup>64</sup> it is reasonable to conclude that many of those seeking justice will be forced to forego the assertion of their rights and interests in

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<sup>58</sup> See Noel Semple, “The Cost of Seeking Civil Justice in Canada” (2016) 93:3 Can Bar Rev 639 at 646 – 656.

<sup>59</sup> Action Committee, *A Roadmap for Change*, *supra* note 19 at 4.

<sup>60</sup> Trevor CW Farrow, “What is Access to Justice?” (2014) 51 Osgoode Hall LJ 957 at 972.

<sup>61</sup> *Ibid.*

<sup>62</sup> “The Going Rate: Canadian Lawyer’s 2016 Legal Fees Survey” (Canadian Lawyer, June 2016), online: [www.canadianlawyermag.com/images/stories/pdfs/2016/CL\\_June\\_16-Survey.pdf](http://www.canadianlawyermag.com/images/stories/pdfs/2016/CL_June_16-Survey.pdf).

<sup>63</sup> Noel Semple, “The Cost of Seeking Civil Justice in Canada” (2016) 93:3 Can Bar Rev 639 at 646.

<sup>64</sup> World Bank, “GDP per capita: Canada”, (2016), online: [data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2015&locations=CA&start=1960&view=chart](http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2015&locations=CA&start=1960&view=chart).

the courtroom, due to the lack of money, or they will represent themselves. As the Supreme Court of Canada held in *Hryniak v Mauldin*:

The full trial has become largely illusory because, except where government funding is available, ordinary Canadians cannot afford to access the adjudication of civil disputes... when court costs and delays become too great, people look for alternatives or simply give up on justice. Sometimes, they choose to represent themselves, often creating further problems due to their lack of familiarity with the law.<sup>65</sup>

This lack of proportion between the cost of legal services and the income of the majority of the population was highlighted in *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*,<sup>66</sup> which began as a family action case. The parties were not represented by lawyers and the hearing took 10 days. Nevertheless, the fees for the hearing alone amounted to \$3,600 – almost the family’s entire net monthly income. Furthermore, the applicant in this family action was not impoverished in the ordinary sense, as she had some assets, including around \$24,500 in savings. However, after the legal fees had depleted these savings, she could not afford the hearing fee.<sup>67</sup> This case exemplifies the extent of the financial barriers to accessing justice in Canada. Therefore, as in Ghana, many Canadians resort to government legal aid organizations when they cannot afford legal services.

However, over the years, many government legal aid organizations have struggled to achieve sufficient funding for their programmes. In its 2013 Report, the Canadian Bar Association (CBA) Access to Justice Committee noted that, “[t]he current inadequacy of civil legal aid is largely attributable to underfunding”.<sup>68</sup> This problem has adversely affected the capacity of these organizations for client intake. As a result, legal aid is only available for those of extremely modest means, but not middle-income earners.<sup>69</sup> However, studies have found that middle-income earners are the most marginalized in terms of financial capacity for access, as the income criterion is set so low and they consequently fail to qualify for legal aid, but cannot even afford short-term legal representation.<sup>70</sup> Over the past two decades, the number of approved civil legal

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<sup>65</sup> *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87 at para 24, 25.

<sup>66</sup> *Trial Lawyers*, *supra* note 1.

<sup>67</sup> *Ibid* at para 5.

<sup>68</sup> CBA, *Equal Justice*, *supra* note 19 at 40.

<sup>69</sup> Action Committee, *A Roadmap for Change*, *supra* note 19 at 3.

<sup>70</sup> See M. J Trebilcock, Lorne Sossin & Anthony J Duggan, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012); Middle Income Access to Civil Justice Initiative Steering Committee, “Middle Income Access

aid applications has been reduced to a third: in 1992-1993, there were almost 18 approved applications for every 1000 Canadian residents, but by 2011-[2012] this number hovered at just over six per 1000 residents, representing a 65.7% decline.<sup>71</sup>

The challenges facing legal aid plans in both Ghana and Canada practically negate the crucial roles played by such initiatives in providing legal services to victims of exclusion. Although legal aid is not the only strategy for advancing access to justice, such programmes are important components of mechanisms to facilitate access to justice, due to the prohibitive cost of legal services. Legal aid organizations instil and nurture the right public consciousness and empower the individual with self-help in the management of legal problems. They also provide opportunities for low or middle-income earners to access formal justice services when necessary. Accordingly, a justice system cannot function fairly or efficiently without a well-resourced and vibrant legal aid system.

### iii. Physical Barriers

*Ghana:* Geographical inequalities in the distribution of Ghana's institutions of justice have further contributed to its problems in accessing justice. There is virtually no decentralization of Ghana's courts, legal aid offices or law firms into the areas where many of those seeking justice can access them.<sup>72</sup> This problem has led to limited and ineffective actual access to legal information, courts and other avenues of dispute resolution, legal aid programmes, and lawyers, due to the cost of travelling to the centres where these resources, services or personnel are located.<sup>73</sup>

The consequences of the above-mentioned geographical imbalances is heightened in the need to access courts in criminal matters. Many prisoners on remand spend years in prison without trial, or due to delays in their prosecution. They consequently languish in their prison cells, sometimes

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to Civil Justice Initiative: Background Paper", online: [www.law.utoronto.ca/documents/conferences2/AccessToJustice\\_LiteratureReview.pdf](http://www.law.utoronto.ca/documents/conferences2/AccessToJustice_LiteratureReview.pdf). The case of *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 SCR 31 exemplifies this problem.

<sup>71</sup> CBA, *Equal Justice*, *supra* note 19 at 40.

<sup>72</sup> The Open Society Initiative for West Africa & The Institute for Democratic Governance, "Ghana Justice Sector and the Rule of Law a Discussion Paper" (The Open Society Initiative for West Africa, 2007) at 17.

<sup>73</sup> See Atuguba, Agyebeng & Dedey, "Access to Justice in Ghana", *supra* note 2 at 26.



for years, after the expiration of their warrants.<sup>74</sup> In his 2012 research on access to justice for prisoners, Akuamoah found that unreasonable delays in the prosecution of remand prisoners were the result of long distances between prisons and courts, compounded by the lack of operational resources and equipment, such as vehicles and personnel, to convey prisoners to court. In many instances, the case had already been called before the accused had reached the court premises. Furthermore, miscommunication between courts, the prosecution and prison officers concerning the dates of hearings has resulted in many prisoners going to court without their cases being called.<sup>75</sup>

Aside from the above, people with disabilities face significant problems in accessing justice in Ghana, due to the geographical imbalance in the distribution of courts. Moreover, in many instances, the mechanisms in place to promote access to justice are not adequately designed to accommodate the circumstances or needs of this segment of the population. As a result, individuals with disabilities face limited access to legal information, courts and other dispute resolution avenues, lawyers, and legal aid programmes. As Inclusion Ghana has stated:

Persons with intellectual disabilities (ID) are all too often denied fair and equal access to justice. For many persons with ID, the justice system is not accessible. Fair treatment as victim, witness or offender, limited communication use and a lack of awareness about laws and services that apply to persons with ID generally are some of the key issues people face.<sup>76</sup>

*Canada:* Similarly, many Canadians do not enjoy equal access to justice, because Canada's institutions of justice and legal service personnel are rarely decentralized beyond the cities and tend not to be located in places that are easily accessible for the majority of the population.<sup>77</sup> This problem has dire consequences for access to justice, as many justice seekers will need to spend hours traveling back and forth to a courthouse,<sup>78</sup> while others may be unable to travel to cities, due to transportation issues that come with cost, the condition of roads, access to vehicles and

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<sup>74</sup> Ghana Prisons Service, *Ten – Year Strategic Development Plan, 2015 – 2025*, (2015) at 7, 28, online: [www.ghanaprison.gov.gh/pdf/10%20years%20strategic%20Plan%20for%20Ghana%20Prisons.pdf](http://www.ghanaprison.gov.gh/pdf/10%20years%20strategic%20Plan%20for%20Ghana%20Prisons.pdf).

<sup>75</sup> Samuel Asare, Akuamoah, *The Justice for All Programme, Its Impact on Ghana's Prisons System: A Case Study of Remand Prisoners at The Nsawam Medium Security Prison* (MA Dissertation, University of Ghana, 2012) at 46 – 48.

<sup>76</sup> Inclusion Ghana, "Opening the Doors of Justice for Persons with Intellectual Disabilities in Ghana" (2013) at 5, online: [www.inclusion-ghana.org/resources/brochures/DRF%20Booklet.pdf](http://www.inclusion-ghana.org/resources/brochures/DRF%20Booklet.pdf).

<sup>77</sup> See Aylwin & Moore, *supra* note 41 at 32 – 37.

<sup>78</sup> Noel Semple, "The Cost of Seeking Civil Justice in Canada" (2016) 93:3 Can Bar Rev 639 at 661.

licensing, and weather conditions.<sup>79</sup> This is compounded by the scarcity of legal professionals and even volunteers undertaking law courses in rural or remote communities.<sup>80</sup>

Another physical barrier to justice consists of a failure to accommodate persons with physical and mental disability in the structure or design of institutions of justice. In fact, Canada's official institutions of law and justice are rarely adapted for access by individuals with physical disabilities, sensory impairment, or diminished intellectual capacity.<sup>81</sup> This state of affairs has led to limited access to courts and other avenues of dispute resolution, lawyers and legal aid programmes, due to the difficulties faced by these segments of the population in accessing such institutions. The Court Disabilities Committee in Ontario has adequately captured the real scope of barriers facing persons with disabilities, as follows:

In most courtrooms, witnesses in wheelchairs cannot testify from the witness box. During many trials, persons called for jury duty are automatically excused if they are deaf or hard of hearing. Persons with disabilities have no way to ensure their complaints or concerns are heard, as there is no official procedure in place to receive and respond to such concerns. ... People in wheelchairs or scooters often cannot enter through the main entrance and are re-routed through an alternative entrance. There is a serious shortage in the court system of sign language interpreters.... Blind individuals too often cannot access court materials that are on-line in PDF form, because the PDF format is less accessible than other electronic formats for the range of adaptive technology that blind, low vision and dyslexic persons use to read electronic text.<sup>82</sup>

Other challenges may include the cost of travelling from a place of work or residence to a court, legal aid office, or public legal information and education organization. Most Canadians suffering pain or limitations to their mobility and flexibility, but residing far from these institutions, are prone to mobility problems associated with transportation. Hence, a significant number of Canadians with physical and mental disabilities remain alienated and excluded from the justice system, while there remain no adequate facilities to accommodate their circumstances.

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<sup>79</sup> See Aylwin & Moore, *supra* note 41 at 31.

<sup>80</sup> See *Ibid* at 34.

<sup>81</sup> Roderick A. Macdonald, "Access to Justice in Canada Today" in Bass, Bogart & Zemans, *supra* note 19 at 25.

<sup>82</sup> Ontario Courts Disabilities Committee, "Weiler Report: Making Ontario's Courts Fully Accessible to Persons with Disabilities" (Ontario: Courts Disabilities Committee, 2006), online: [www.ontariocourts.ca/accessible\\_courts/en/report\\_courts\\_disabilities.htm](http://www.ontariocourts.ca/accessible_courts/en/report_courts_disabilities.htm).

### 1.2.3 Technology: The Answer?

The access to justice mantra remains theoretical rather than practical if the barriers to justice are not addressed. Limited or no knowledge of legal and social responsibilities will lead to the infringement of the rights of others and the denial of entitlements to those who deserve them.<sup>83</sup> When court costs and delays become too great, people look for alternatives or simply abandon the idea of seeking justice altogether.<sup>84</sup> Additionally, the more geographically inaccessible courts and legal aid offices are for the majority of the population, the less likely they are to want to invest their time and resources in accessing justice.<sup>85</sup> These challenges impede legal health promotion, dispute avoidance, dispute management and adjudication for the prevention or resolution of disputes and problems. Ultimately, many legal problems are left unaddressed and the potential cost of an inaccessible justice system – whether in economic or social terms, or with regard to health - will have an adverse effect on individuals and society as a whole.<sup>86</sup>

The literature advocates reform mechanisms to increase access for groups who are excluded or alienated from the justice system. Where the public cannot obtain the necessary information for negotiating the legal system and their rights and responsibilities within it, the obvious remedy is to provide them with that knowledge.<sup>87</sup> Moreover, if it proves burdensome to finance the justice system, but court and lawyers' fees are unaffordable for the majority of the population, then the justice system could be redesigned to minimize the cost of litigation and legal services. This could be achieved by incorporating alternatives to litigation and legal services, allowing alternative legal service providers to offer certain types of legal service such as providing legal information and assistance in the preparation of legal documents such as wills and tenancy agreements, while lawyers concentrate on the legal matters that specifically require their judgment, deep analysis and careful planning.<sup>88</sup> Institutions of justice could also integrate

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<sup>83</sup> Atuguba, Agyebeng & Dedey, "Access to Justice in Ghana", *supra* note 2 at 25 – 26.

<sup>84</sup> *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87 at para 25.

<sup>85</sup> Sehgal, *supra* note 2.

<sup>86</sup> See Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Ottawa: Department of Justice Canada, 2007) at 73 – 81, online: [www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07\\_la1-rr07\\_aj1/rr07\\_la1.pdf](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf); Robin L. Nobleman, "Addressing Access To Justice As A Social Determinant of Health" (2014) 21 Health LJ 49.

<sup>87</sup> See Lawrence M. Friedman, "Access to Justice: Social and Historical Context" in Mauro Cappelletti & John Weisner, eds, *Access to Justice: Promising Institutions*, Vol II, Book 1 (Dott. A. Giuffrè Editore; Milan: Sijthoff & Noordhoff, 1978) at 6.

<sup>88</sup> Roderick A. Macdonald, "Access to Justice in Canada Today" in Bass, Bogart & Zemans, *supra* note 19 at 45, 52, 54, 81 – 85 (suggesting mechanisms for lowering the cost of litigation and legal services).

mitigating mechanisms to overcome the problems associated with geographical imbalances in their distribution.<sup>89</sup>

In Ghana and Canada, various mechanisms of reform, including community legal clinics, neighbourhood justice centres, pro bono services, legal insurance, ADR services (e.g. court-annexed mandatory mediation, consensual arbitration or mediation), alternative legal service providers, class actions, and boards and tribunals, have been designed to address the challenges associated with their respective justice systems.<sup>90</sup> These mechanisms have worked together, thus making a significant contribution to the enhancement of access to justice by eliminating or mitigating the barriers that limit such access.

Technology is now a broadly acknowledged means of supplementing or facilitating these existing mechanisms for promoting access to justice.<sup>91</sup> Many proponents of technology-based access to justice initiatives argue that web-based legal information, online dispute resolution (ODR), and videoconferencing as potential technologies that can improve access to justice.<sup>92</sup> As outlined in Chapters Three, Four and Five, web-based legal information, ODR and videoconferencing may be creatively employed to address informational, financial, physical and material barriers to justice, while advancing the pathways to justice, namely legal health promotion, dispute avoidance, dispute management, adjudication.

However, in Ghana and Canada, the capacity of the intended beneficiaries to harness these technologies will chiefly depend on whether there is an enabling technological environment to accommodate them. This prerequisite gives rise to the discussion on technological inclusivity, or the digital divide. Without meaningful access to technology, institutions of justice risk expenditure on initiatives that may have little or no impact on access to justice. Indeed, the inequalities may be aggravated, rather than redressed. Accordingly, a framework is required for predicting or measuring the prospects of success or failure for initiatives to promote access to

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<sup>89</sup> Aylwin & Moore, *supra* note 41 at 43.

<sup>90</sup> See generally Roderick A. Macdonald, “Access to Justice in Canada Today” in Bass, Bogart & Zemans, *supra* note 19 at 19 – 107; Atuguba, Agyebeng & Dedey, “Access to Justice in Ghana”, *supra* note 2 at 11 – 12.

<sup>91</sup> See e.g. CBA, *Equal Justice*, *supra* note 19 at 76; “Using Technology to Create an Effective, Efficient and Expeditious Justice Delivery System” *DreamOval* (December 2014), online: [www.dreamoval.com/using-technology-transform-ghana-justice-delivery-system/](http://www.dreamoval.com/using-technology-transform-ghana-justice-delivery-system/). See also James E Cabral *et al*, “Using Technology to Enhance Access to Justice” (2012) 26:1 Harv JL & Tech 241.

<sup>92</sup> See e.g. Bailey, Burkell & Reynolds, *supra* note 3; Ijeoma Ononogbu, “Online Dispute Resolution in Africa” in Uwazie, *supra* note 3 at 73 – 94; Salter & Thompson, *supra* note 3.

justice through the use of technology. The next chapter engages with the literature on the digital divide, in order to generate variables for such measurement.

## CHAPTER TWO: THE DIGITAL DIVIDE - A FRAMEWORK FOR ANALYSIS

### 2.1 Introduction

Modern technological innovations have the potential to broaden and enhance communication and access to information. Technology is now a valuable resource and even an important survival tool for full participation in society.<sup>93</sup> Nevertheless, although technology can improve access to information and communication, it may not be able to do so for everyone, due to the digital divide. According to Hughes has pointed out: “the ‘digital divide’ always finds certain people on one side, who can benefit, and certain people on the other, for whom the benefit is less or for whom technology is actually detrimental.”<sup>94</sup> Hence, the consequences for the latter are significant and extensive. Technology has largely diffused into the routine practices of everyday life to the extent that, as a condition, “people who do not have access to and ability to navigate the Internet will effectively be shut out of many aspects of commercial and civic life”.<sup>95</sup> Consequently, questions surrounding the digital divide are of major concern to individuals and society as a whole because the economic, cultural and social possibilities of individuals and nations will depend on their ability to leverage digital technologies and participate in the information age.<sup>96</sup> Hence, it is imperative that State institutions and those planning, developing and implementing technology design appropriate policies and programmes to forestall any possible repercussions of the digital divide. As mentioned earlier, without such measures, the inequalities may worsen, instead of improving.

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<sup>93</sup> Sally Lindsay, “Disability and The Digital Divide: Gaps and Future Directions” in Cassie M. Evans, ed, *Internet Issues: Blogging, the Digital Divide and Digital Libraries* (Commack, New York, USA: Nova Science Publishers, Inc., 2010) at 215.

<sup>94</sup> Patricia Hughes, “Background Paper: Developing Guidelines for Using Technology to Advance Access to Justice” (Ontario; Canada: The Action Group on Access to Justice, October 2016), online: [theactiongroup.ca/wp-content/uploads/2016/11/Background\\_Paper-Developing\\_Guidelines\\_for\\_Using\\_Technology\\_2016.pdf](http://theactiongroup.ca/wp-content/uploads/2016/11/Background_Paper-Developing_Guidelines_for_Using_Technology_2016.pdf).

<sup>95</sup> Julia R. Gordon, “Legal Services and The Digital Divide” (2001) 12 Alb LJ Sci & Tech 809 at 811.

<sup>96</sup> Michael Haight, Anabel Quan-Haase & Bradley A Corbett, “Revisiting the Digital Divide in Canada: The Impact of Demographic Factors on Access to The Internet, Level of Online Activity, And Social Networking Site Usage” (2014) 17:4 Information, Communication & Society 503 at 504.

While the concept of the digital divide has not been precisely defined, this thesis has adopted the definition articulated by the eEurope Advisory Group, which describes the digital divide as “the gap between those who are empowered to substantially participate in an information and knowledge-based society and economy, and those who are not”.<sup>97</sup> Despite the fact that there has been significant discussion on the impact of the digital divide on technology-based access to justice initiatives, the variables accounting for the inequalities in the corresponding appropriation process remain undefined in the literature.<sup>98</sup> It is therefore valuable to generate a framework for analysing the impact of these inequalities in digital access on technology-based access to justice initiatives.

Recent studies from the perspective of communication and information science have found that the issues with the digital divide are plural and originate from the constellation of interconnected access and usage variables, including motivational access, physical and material access, literacy access, and usage access which define the prerequisites for the appropriation of a digital technology.<sup>99</sup> Consequently, a framework resulting from these variables can serve as a useful tool for analysing the extent to which technology-based access to justice initiatives can diffuse or has diffused into the justice systems in Ghana and Canada to advance access to justice. Under this chapter, I survey the literature on these variables to highlight the factors accounting for inequalities at this stage of technology appropriation to analyse the extent to which the digital divide affects or will affect the diffusion rates of technology-based access to justice initiatives in Ghana and Canada. The survey limits its scope to the various types of divide emerging in the appropriation process of a technology. It does not engage with the ways in which

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<sup>97</sup> eEurope Advisory Group, *E-Inclusion: New Challenges and Policy Recommendations* (July 2005) at 7, online: The Knowledge Society Agency (UMIC)

[www.unic.pt/images/stories/publicacoes/kaplan\\_report\\_einclusion\\_final\\_version.pdf](http://www.unic.pt/images/stories/publicacoes/kaplan_report_einclusion_final_version.pdf).

<sup>98</sup> See e.g. Hughes, “Using Technology to Advance Access to Justice”, *supra* note 94; Patricia Hughes, “Advancing Access to Justice Through Generic Solutions: The Risk of Perpetuating Exclusion” (2013) 31:1 Windsor YB Access Just 1 – 22; Bailey, Burkell & Reynolds, *supra* note 3 at 199 – 200; Sherry MacLennan, “Empowerment, Technology, and Family Law” in Karim Benyekhlef et al, *eAccess to Justice* (Canada: University of Ottawa Press, 2016) at 199 – 202; Julia R. Gordon “Legal Services and The Digital Divide” (2001) 12 Alb LJ Sci & Tech 809 at 812 – 814.

<sup>99</sup> See e.g. David J. Gunkel, “Second thoughts: toward a critique of the digital divide” (2003) 5:4 New Media & Society 499 at 504, Jan A. G. M. van Dijk, *The Deepening Divide*, *supra* note 10; van Deursen & van Dijk, *supra* note 7; J. A. M. van Deursen, et al, “The Compoundness and Sequentiality of Digital Inequality” (2017) 11 Intl J Communication 452; Shahla Ghobadi & Zahra Ghobadi, “How Access Gaps Interact and Shape Digital Divide: A Cognitive Investigation” (2015) 34:4 Behaviour & Information Technology 330; Alcides Velasquez, “Digital Divide in Colombia: The Role of Motivational and Material Access in the Use and Types of Use of ICTs” (2013) 7 Intl J Communication 1768; David R Brake, “Are We All Online Content Creators Now? Web 2.0 and Digital Divides” (2014) 19 J Computer-Mediated Communication 591.

sociodemographic factors, such as income, education, age, gender, geography and disability status account for these divides.<sup>100</sup>

## 2.2 Variables of Digital Access

### 2.2.1 Motivational Access

The motivation to access a technology initiates the process of appropriating that technology. It defines an individual's internal beliefs and attitudes towards acquiring, learning about, using and adopting technological devices and functionalities.<sup>101</sup> The concept of motivational access is predominantly measured by applying the Technology Acceptance Model (TAM).<sup>102</sup> Davis conceptualizes two variables according to the TAM: *perceived usefulness* and *perceived ease of use*, which explain the internal beliefs and attitudes held by individuals toward a new technology.<sup>103</sup> *Perceived usefulness* defines “the degree to which a person believes that using a particular system would enhance [the purpose of usage]”, and *perceived ease of use* measures “the degree to which a person believes that using a particular system would be free from effort”.<sup>104</sup>

*Perceived usefulness* has a strong and consistent relationship with usage, since individuals adopt technology when they believe that they will derive some benefit from its use.<sup>105</sup> In contrast,

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<sup>100</sup> For studies on these factors and the digital divide, see e.g. Ghana Ministry of Communications & Ghana Investment Fund for Electronic Communications, “Study of The Digital Divide in Ghana: Analysis and Recommendations” (October 2013) at 14 – 15, [1e8q3q16vyc81g8l3h3md6q5f5e.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/USAID-GBI-Final-Report-Ghana-Digital-Divide-Study-FINAL.pdf](http://1e8q3q16vyc81g8l3h3md6q5f5e.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/USAID-GBI-Final-Report-Ghana-Digital-Divide-Study-FINAL.pdf) [GMC & GIFEC, “The Digital Divide in Ghana”]; Michael Haight, Anabel Quan-Haase & Bradley A Corbett, “Revisiting the digital divide in Canada: the impact of demographic factors on access to the internet, level of online activity, and social networking site usage” (2014) 17:4 Information, Communication & Society 503. See also Thompson S. H. Teoa, Vivien K. G. Limb & Raye Y. C. Lai, “Intrinsic and Extrinsic Motivation in Internet Usage” (1999) 27 Omega, Intl J Mgmt Science 25; Thomas N Friemel, “The Digital Divide Has Grown Old: Determinants of A Digital Divide Among Seniors” (2016) 18:2 New Media & Society 313; Alexander J.A.M. van Deursen, Jan A.G.M. van Dijk & Peter M. ten Klooster, “Increasing Inequalities In What We Do Online: A Longitudinal Cross Sectional Analysis of Internet Activities Among The Dutch Population (2010 To 2013) Over Gender, Age, Education, And Income” (2015) 32 Telematics and Informatics 259; van Deursen & van Dijk, *supra* note 7.

<sup>101</sup> See van Dijk, *The Deepening Divide*, *supra* note 10 at 27.

<sup>102</sup> Fred D. Davis, “Perceived Usefulness, Perceived Ease of Use, and User Acceptance of Information Technology” (1989) 13:3 MIS Quarterly 319; Fred D. Davis, Richard P. Bagozzi & Paul R. Warshaw, “User Acceptance of Computer Technology: A Comparison of Two Theoretical Models” (1989) 35:8 Management Science 982.

<sup>103</sup> Davis, *supra* note 102 at 320.

<sup>104</sup> *Ibid.*

<sup>105</sup> Thompson S. H. Teoa, Vivien K. G. Limb & Raye Y. C. Lai, “Intrinsic and Extrinsic Motivation in Internet Usage” (1999) 27 Omega, Intl J Mgmt Science 25 at 27.



*perceived ease of use* directly influences usage, because individuals tend to adopt and use technology if it is easy to use or requires little effort from the user.<sup>106</sup> *Perceived ease of use* also indirectly influences *perceived usefulness*, as systems that are complex to use are more likely to be perceived as ‘useless’ or unnecessary.<sup>107</sup> A person is consequently unlikely to use a technology, or will regard it as useless or unnecessary, if it is too complex to use and the effort of using it outweighs its potential benefits.

Inequalities in *perceived usefulness* and *perceived ease of use* account for technology ‘wants’ and technology ‘want-nots’. These are terms applied to individuals who either accept or refuse to take any significant step towards using a technology, based on motivation. Therefore, those who have problems with motivation to use a technology and therefore refrain from taking any steps to use it are referred to as ‘want-nots’.<sup>108</sup> Some studies have found that the main reasons for the refusal of ‘want-nots’ to use a technology include an absence of any need for it; a lack of time; a lack of interest; the rejection of the medium as being useless; a lack of skill in using such technologies; computer-related anxiety, and physical or mental disabilities.<sup>109</sup> However, this phenomenon raises questions about why these reasons are cited by some individuals for not using a technology or for their negative attitudes towards its use.

Studies have found that people can develop negative attitudes towards a technology, due to barriers to digital participation, as well as disincentives.<sup>110</sup> The barriers are rooted in external variables, which influence an individual’s decision over the use of a technology. Variables, such as awareness of the system’s existence, its accessibility and capabilities,<sup>111</sup> or the quality of the

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<sup>106</sup> Thompson S. H. Teoa, Vivien K. G. Limb & Raye Y. C. Lai, “Intrinsic and Extrinsic Motivation in Internet Usage” (1999) 27 Omega, Intl J Mgmt Science 25 at 27.

<sup>107</sup> *Ibid.*

<sup>108</sup> See Jan A.G.M. van Dijk, “A Theory of the Digital Divide” in Massimo Ragnedda & Glenn W. Muschert, eds, *The Digital Divide The internet and social inequality in international perspective* (London, UK & New York, USA: Routledge, 2013) at 35 – 36; Mick Brady, “The Digital Divide Myth” *E-Commerce Time* (4 August 2000), online: [www.ecommercetimes.com/story/3953.html](http://www.ecommercetimes.com/story/3953.html).

<sup>109</sup> See Amanda Lenhart et al, “The Ever-Shifting Internet Population: A new look at Internet access and the digital divide” (Washington, DC: Pew Internet and American Life Project, 2003) at 10, online: [www.pewinternet.org/files/old-media/Files/Reports/2003/PIP\\_Shifting\\_Net\\_Pop\\_Report.pdf.pdf](http://www.pewinternet.org/files/old-media/Files/Reports/2003/PIP_Shifting_Net_Pop_Report.pdf.pdf).

<sup>110</sup> See generally Hartmut Wandke, Michael Sengpiel & Malte Sönksen, “Myths About Older People’s Use of Information and Communication Technology” (2012) 58 Gerontology 564 at 566 – 568.

<sup>111</sup> See Everett M. Rogers, *Diffusion of Innovations*, 5th ed (New York; USA: The First Press, 2003) at 163 – 169; Janice C. Sipiior, Burke T. Ward & Regina Connolly, “E-government Awareness and Visitation among the Digitally Disadvantaged” (2013) 12:1 J Internet Commerce 26; Barbara Crump & Andrea McIlroy, “The Digital Divide: Why the “don’t-wants-tos” wont Compute: Lessons from a New Zealand ICT Project” (2003) 8:12 First Monday, online:

information produced by it,<sup>112</sup> will influence *perceived usefulness*; while the complexity of its navigation and information,<sup>113</sup> the user's own training and experience in using a computer or other digital device,<sup>114</sup> and the involvement of the intended users in the development of the system,<sup>115</sup> will have significant impact on its *perceived ease of use*. The differences in these variables account for the divides in motivation to access, i.e. the 'wants' and 'want nots'. Here, those who are aware of the accessibility and capabilities of a technology will want to use it, due to its *perceived usefulness*, while those who are ignorant of the technology's accessibility and capabilities will perceive it as 'useless'. As da Silva and da Silva have pointed out: "without the awareness of the technology it is impossible for someone to imagine that a particular technology might be a savior from socio-economic troubles."<sup>116</sup>

Hence, whether a technology is acquired, used or adopted by an individual will depend on external variables that account for the differences in a technology's *perceived usefulness* and *perceived ease of use*. Consequently, mechanisms to address the differences in motivation to access a technology should investigate and address the barriers and disincentives accounting for the various reasons cited by individuals refraining from using a technology. There is consequently a need for measures to increase the attractiveness of a technology through various mechanisms, such as enhanced awareness; better quality information; greater simplicity in navigation and information, and the involvement of the intended users in the system's development.

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[journals.uic.edu/ojs/index.php/fm/article/view/1106/1026](http://journals.uic.edu/ojs/index.php/fm/article/view/1106/1026); Janice C. Sipior, Burke T. Ward & Regina Connolly, "E-government Awareness and Visitation among the Digitally Disadvantaged" (2013) 12:1 J Internet Commerce 26.

<sup>112</sup> See William H. DeLone & Ephraim R. McLean, "Information Systems Success: The Quest for the Dependent Variable" (1992) 3:1 Information Systems Research 60; Judy Chuan-Chuan Lin & Hsipeng Lu, "Towards an Understanding of The Behavioural Intention to Use a Web Site" (2000) 20 Intl J Information Management 197 at 205.

<sup>113</sup> See e.g. Hartmut Wandke, Michael Sengpiel & Malte Sönksen, "Myths About Older People's Use of Information and Communication Technology" (2012) 58 Gerontology 564 at 566 – 568.

<sup>114</sup> Magid Igarria, Tor Guimaraes & Gordon B. Davis, "Testing the Determinants of Microcomputer Usage via a Structural Equation Model" (1995) 11:4 J Management Information Systems 87.

<sup>115</sup> Jack J. Baroudi, Margrethe H. Olson, And Blake Ives, "An Empirical Study of the Impact of User Involvement on System Usage and Information Satisfaction" (1986) 29:3 Comm ACM 232.

<sup>116</sup> Pereira da Silva & Loureiro da Silva, "Digital Inclusion and Electronic Government: Looking for Convergence in the Decade 1997-2008" in Information Resource Management Association, ed, Digital Literacy: Concepts, Methodologies, Tools and Applications" Vol 1 (Hershey; USA: Information Science Reference, 2013) at 1414.

### 2.2.2 Physical and Material Access

After sufficient motivation has been generated, there needs to be physical and material access to a computer, the Internet or other digital medium for performing the intended activity.<sup>117</sup> Research on material and physical access therefore investigates whether a person has a means of access, should they choose to do so. This means of access is defined as the physical connection to the technology via digital devices, such as a computer connected to the Internet, a tablet, a smartphone, or interactive television.<sup>118</sup>

The literature identifies two major divides at this stage of the process of appropriating a technology – the divide in physical access and the divide in material access.<sup>119</sup> Physical access divides measure the gap between those who are physically connected to the Internet and those who do not have access. In contrast, material access divides measure the disparity in material resources possessed by those who have gained access to the Internet. As Dijk points out, material resources “keep playing their role after a physical connection is acquired”.<sup>120</sup> Material access divides also take into account the diversity of devices used to access the Internet (i.e. the device divide, such as PC-based only, mobile-based only, and both PC- and mobile-based Internet).<sup>121</sup> Disparities appear in the different functions and software that these devices can support. Compared to computer users, mobile users are, for example, challenged by reduced support for text input; small screen size; menus that may be difficult to navigate; challenging input conditions, and pages that are not formatted for use on a mobile device. Hence, computers and laptops are more convenient for online activities that include searching for information, using e-mail, participating in online discussion forums and watching videos.<sup>122</sup>

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<sup>117</sup> See van Dijk “A Theory of the Digital Divide” in Ragnedda & Muschert, *supra* note 108 at 34.

<sup>118</sup> See van Deursen & van Dijk, *supra* note 7 at 380.

<sup>119</sup> van Dijk “A Theory of the Digital Divide” in Ragnedda & Muschert, *supra* note 108 at 37 – 40; Giulia McHenry et al, “The Digital Divide Is Closing, Even as New Fissures Surface” (Paper delivered at the TPRC 44: The 44th Research Conference on Communication, Information and Internet Policy 2016, 27 September 2016), online: Social Science Research Network [ssrn.com/abstract=2757328](https://ssrn.com/abstract=2757328).

<sup>120</sup> van Dijk, *The Deepening Divide*, *supra* note 10 at 117.

<sup>121</sup> Giulia McHenry et al, “The Digital Divide Is Closing, Even as New Fissures Surface” (Paper delivered at the TPRC 44: The 44th Research Conference on Communication, Information and Internet Policy 2016, 27 September 2016), online: Social Sciences Research Network [ssrn.com/abstract=2757328](https://ssrn.com/abstract=2757328); Jonathan Donner, Shikoh Gitau & Gary Marsden, “Exploring Mobile-only Internet Use: Results of a Training Study in Urban South Africa” (2011) 5 Intl J Communication 574.

<sup>122</sup> See Katy E. Pearce & Ronald E. Rice, “Digital Divides from Access to Activities: Comparing Mobile and Personal Computer Internet Users” (2013) 63 J Communication 721 at 727.

Disparities between Internet users may also emerge in terms of Internet connection speed, which can range from high-speed access (or broadband connections) to low-speed access (or non-broadband connections).<sup>123</sup> Compared to slow-speed access, broadband provides adequate transmission capacity and speed for high quality voice, data and video applications and is considered as an accelerator of socio-economic development.<sup>124</sup> Accordingly, online activities that include information seeking; business transactions; learning, and general functions are more easily accomplished with high-speed access.<sup>125</sup> Hence, computer users with high-speed connections are more likely to perform online activities with ease, compared to mobile users with low-speed access (or even a high-speed connection).

Inequalities in physical and material access have thus led to a further discrepancy between technology ‘haves’ and ‘have nots’.<sup>126</sup> Technology ‘have-nots’ are quite literally defined by what they lack, in comparison to their counterparts, who ‘have’, i.e. those who are physically connected to the technology and those who are not; those connected via mobiles and those connected via computers, and those with high-speed as opposed to slow-speed access.

### 2.2.3 Access to Digital Literacy

Nevertheless, the fact of having the necessary physical and material access does not automatically lead to the appropriation of a technology; one must also possess the digital literacy/competence to leverage it.<sup>127</sup> Digital literacy includes “all competencies enabling

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<sup>123</sup> See Elizabeth L. Davison & Shelia R. Cotton, “Connection disparities: The importance of broadband connections in understanding today’s digital divide” in Ferro, Enrico, et al, eds, *Handbook of research on overcoming digital divides: Constructing an equitable and competitive information society* (Hershey, PA: IGI Global, 2009) at 346-358. See also Prabir K. Neogi & Josie Brocca Neogi, “Broadband Adoption and Use in Canada and the US: Is the Digital Divide Closing?” (Paper delivered at the TPRC 2011, September 24, 2011), online: Social Science Research Network [ssrn.com/abstract=1983590](https://ssrn.com/abstract=1983590).

<sup>124</sup> See National Communications Authority, Ghana, “2016 Quarterly Statistical Bulletin on Communications in Ghana: Second Quarter” (September 2016) at 18, online: [www.nca.org.gh/assets/Uploads/Quarterly-statistics-03-11-16-fin.pdf](http://www.nca.org.gh/assets/Uploads/Quarterly-statistics-03-11-16-fin.pdf).

<sup>125</sup> See Elizabeth L. Davison & Shelia R. Cotton, “Connection Disparities: The Importance of Broadband Connections in Understanding Today’s Digital Divide” in Ferro, Enrico, et al, eds, *Handbook of research on overcoming digital divides: Constructing an equitable and competitive information society* (Hershey, PA: IGI Global, 2009) at 346 – 358.

<sup>126</sup> Joan Sidney Howland, “The ‘Digital Divide’: are we becoming a world of technological ‘haves’ and ‘have-nots?’” (1998) 16:5 *The Electronic Library* 287; David J. Gunkel, “Second Thoughts: Toward A Critique of The Digital Divide” (2003) 5:4 *New Media & Society* 499 at 506 – 507.

<sup>127</sup> See van Dijk “A Theory of the Digital Divide” in Ragnedda & Muschert, *supra* note 108 at 35. Different concepts including ‘digital competence’, ‘digital literacy’, ‘digital skills’, and ‘Internet skills’ are employed to analyze and describe how people make use of computers and the Internet. However, digital literacy and competence

individuals to use new information technologies and to feel at home in cybernetic worlds.”<sup>128</sup> Ng conceptualizes such competencies into three main dimensions: technical, cognitive and socio-emotional.<sup>129</sup> The technical dimension of digital literacy entails the necessary technical and operational literacy to carry out basic computer-based operations and access resources for everyday use.<sup>130</sup> Cognitive literacy also pertains to the ability to think critically in the search and then to evaluate and create a cycle for dealing with digital information.<sup>131</sup> The Organization for Economic Co-operation and Development (OECD) summarizes these two elements of digital literacy as “the ability to use digital devices and functionality to access and manage information”.<sup>132</sup> Social-emotional literacy refers to a user’s ability to, for example, use the Internet responsibly for communicating, socializing and learning, observing ‘netiquette’ through the application of similar rules as in face-to-face communication such as respect and using appropriate language and words, and preserving online safety and security (cyber-safety).<sup>133</sup>

Digital literacy therefore consists of a cluster of technical, cognitive and socio-emotional literacy. The concept goes beyond mere digital skills, which solely imply the ability to effectively use digital devices and manage their functionality. Instead, digital literacy includes the ability to search and evaluate (including reading and understanding) information and then to analyse and apply it to one’s circumstances or the purpose for which it was sourced. Moreover, it encompasses information exchange and meaningful interaction built on communication netiquette. Disparities in digital literacy are conceptualized as technology ‘knowers’ and ‘know-

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are broader than digital and Internet skills. While digital or Internet skills seem to place more emphasis on technical conditions, digital literacy encompasses all competencies enabling individuals to leverage a technology. See Kirsti Ala-Mutka, “Mapping Digital Competence: Towards a Conceptual Understanding” (Luxemburg, European Union, 2011), online: [ftp.jrc.es/EURdoc/JRC67075\\_TN.pdf](ftp.jrc.es/EURdoc/JRC67075_TN.pdf); Howard Rheingold, “Attention, and Other 21st-Century Social Media Literacies” (2010) 45:5 EDUCAUSE Rev 14.

<sup>128</sup> Daniel Weinstock, “Cyberjustice and Ethical Perspectives of Procedural Law” in Karim Benyekhlef et al, *eAccess to Justice* (Canada: University of Ottawa Press, 2016) at 307.

<sup>129</sup> Wan Ng, “Can we teach digital natives digital literacy?” (2012) 59 Computers & Education 1065 at 1067 – 1068. For a fulsome discussion of the facets of digital literacy, see Ester van Laar et al, “The Relation Between 21st-Century Skills and Digital Skills: A Systematic Literature Review” (May 2017) 72 Computers Human Behavior 577.

<sup>130</sup> Ng, *supra* note 129 at 1068.

<sup>131</sup> *Ibid.*

<sup>132</sup> Organization for Economic Co-operation and Development (OECD) (2015), *Adults, Computers and Problem Solving: What’s the Problem?* (Paris: OECD Publishing, 2015) at 3.

<sup>133</sup> Ng, *supra* note 129 at 1068.

nots'.<sup>134</sup> Technology 'knowers' are privileged to be able take advantage of a technology at the expense of 'know-nots'. As Rheingold aptly points out: "[a]ccess to many media empowers only those who know how to use them."<sup>135</sup> Hence, even as increasing numbers of individuals gain physical and material access, differences in their digital literacy create another type of digital inequality, constituting the 'knowers', who take advantage of the digital society and the 'know-nots', who miss out on the growing benefits it yields.

#### 2.2.4 Usage Access

Usage access defines the purpose of the whole process of technology appropriation<sup>136</sup> and has its own grounds or determinants.<sup>137</sup> A recurring salient determinant of usage access is the type of activity engaged in when an individual goes online.<sup>138</sup> Even when the gap in motivational access, physical and material access, and digital literacy closes, it is imperative to study what people actually do online, because "[i]nsofar as Internet use can enhance people's life chances, it is the types of activities for which people use the medium that will be most important in examining potential divides".<sup>139</sup> As Haight et al. have stated: "measuring individuals' online engagement and the range of activities that users perform is critically important for understanding how those who are connected take advantage of the opportunities afforded by the internet."<sup>140</sup>

Consequently, the usage access thesis measures the level of benefit obtained by users from a technology. It applies a normative judgement, which assumes that some segments of the population will frequently use capital-enhancing applications that promise the most

<sup>134</sup> See Mike Colledge & Michael Haight, "The risk of building infrastructure without building digital literacy" *The Globe and Mail* (September 16, 2016), online: [www.theglobeandmail.com/report-on-business/rob-commentary/the-risk-of-building-infrastructure-without-building-digital-literacy/article32043633/](http://www.theglobeandmail.com/report-on-business/rob-commentary/the-risk-of-building-infrastructure-without-building-digital-literacy/article32043633/).

<sup>135</sup> Howard Rheingold, "Attention, and Other 21st-Century Social Media Literacies" (2010) 45:5 *EDUCAUSE Rev* 14 at 14.

<sup>136</sup> Alexander JAM van Deursen & Jan AGM van Dijk, "The digital divide shifts to differences in usage" (2014) 16:3 *New Media & Society* 507 at 508

<sup>137</sup> van Dijk, *The Deepening Divide*, *supra* note 10 at 95.

<sup>138</sup> See e.g. Alexander J.A.M. van Deursen, Jan A.G.M. van Dijk & Peter M. ten Klooster, "Increasing Inequalities In What We Do Online: A Longitudinal Cross Sectional Analysis of Internet Activities Among The Dutch Population (2010 To 2013) Over Gender, Age, Education, And Income" (2015) 32 *Telematics and Informatics* 259; van Deursen & van Dijk, *supra* note 7; Katy E. Pearce & Ronald E. Rice, "Digital Divides from Access to Activities: Comparing Mobile and Personal Computer Internet Users" (2013) 63 *J Communication* 721 at 727.

<sup>139</sup> Eszter Hargittai & Amanda Hinnant, "Digital Inequality: Differences in Young Adults' Use of the Internet" (2008) 35:5 *Communication Research* 602 at 617 – 18.

<sup>140</sup> Michael Haight, Anabel Quan-Haase & Bradley A Corbett, "Revisiting the digital divide in Canada: the impact of demographic factors on access to the internet, level of online activity, and social networking site usage" (2014) 17:4 *Information, Communication & Society* 503 at 504.

advantageous effects on their capital and resources (in their work, career, study, social standing, participation in society, etc.), while other segments will mainly use entertainment applications, which hold little or no advantage for their capital or resources.<sup>141</sup> Hence, the use of the Internet can equally contribute to social inequalities.<sup>142</sup> Furthermore, there is some research to indicate that motivation is the main determining factor for the type of online activity engaged in. The motives for an individual going online will thus influence what they actually do online after gaining access.<sup>143</sup> I argue that usage access is more applicable, when different activities can be performed via the same digital medium; for example, a computer connected to the Internet can be used to perform activities that include browsing for information; accessing the news; banking, and watching movies or music videos. However, the usage access thesis is less applicable when a digital medium is programmed with a single activity. For example, a computer connected to the Internet that is programmed for banking is ruled out for social networking sites.

Differences in the types of activity that a technology is put into use for after gaining access create another type of digital inequality in a digital society. As Hargittai and Hinnant have noted: “[the] discrepancy in beneficial payoffs may exacerbate digital inequality.”<sup>144</sup> Discrepancy in usage access may thus lead to a difference between the beneficial and non-beneficial users of a digital medium, because not all digital activities enhance a person’s human, financial or social capital. While beneficial users will employ a technology (such as the Internet) to enhance their development, non-beneficial users are more likely to use it for activities with little or no advantageous effect on their capital and resources. Hence, studies on digital divides should not only encompass motivational, physical, material and literacy access, but should also investigate what users do with the technology after accessing it.

To summarise, the digital divide is not purely concerned with measuring the gap in physical and material connection to a technology, particularly the Internet; the concept goes further to

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<sup>141</sup> van Dijk “A Theory of the Digital Divide” in Ragnedda & Muschert, *supra* note 108 at 44.

<sup>142</sup> Paul DiMaggio et al, “Digital inequality: From unequal access to differentiated use” in Kathryn M. Neckerman, ed, *Social Inequality* (New York, NY: Russell Sage Foundation, 2004) at 355 – 400.

<sup>143</sup> See Alexander J.A.M. van Deursen, Jan A.G.M. van Dijk & Peter M. ten Klooster, “Increasing Inequalities In What We Do Online: A Longitudinal Cross Sectional Analysis of Internet Activities Among The Dutch Population (2010 To 2013) Over Gender, Age, Education, And Income” (2015) 32 *Telematics and Informatics* 259 at 271.

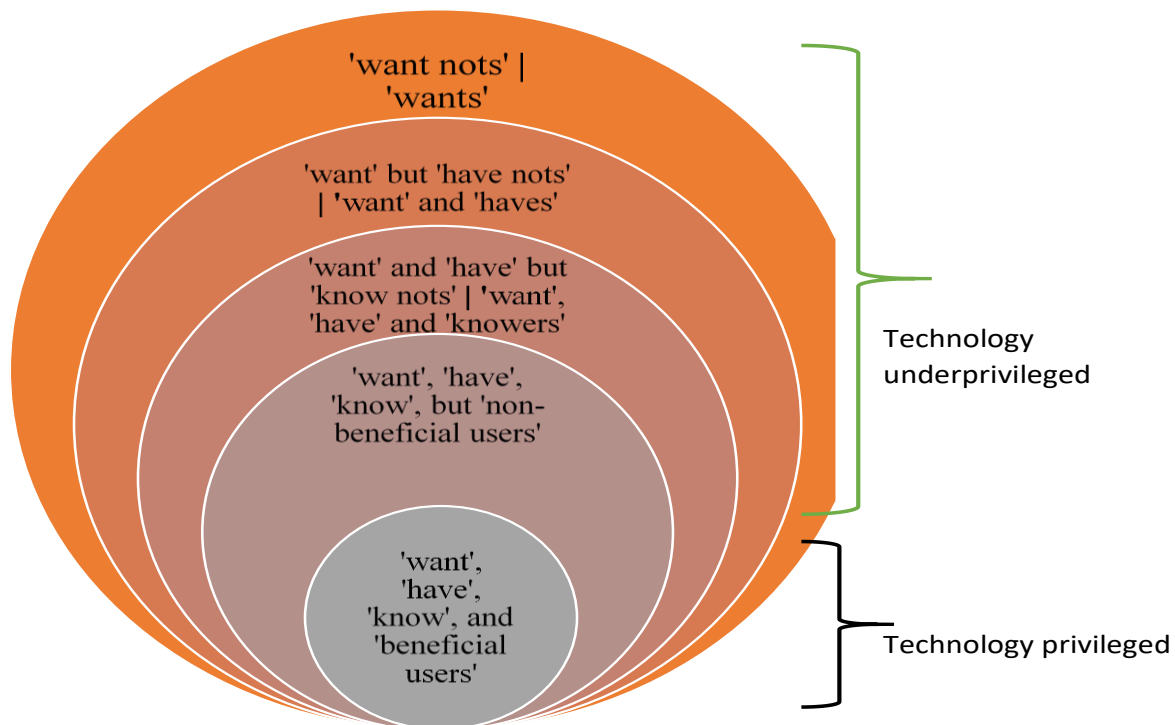
<sup>144</sup> Eszter Hargittai & Amanda Hinnant “Digital Inequality: Differences in Young Adults’ Use of the Internet” (2008) 35:5 *Communication Research* 602 at 606.



measure the divides in the full appropriation of a technology: motivation to access it, physical and material accessibility, literacy and usage.

## 2.3 Framework for Analysis

For technological innovations to be effectively and adequately diffused into the Ghanaian and Canadian justice systems in a bid to enhance access to justice, the general population needs to be initially motivated to use it; have the means of accessing if they so choose; know how to use it, and use it for a beneficial purpose (such as addressing barriers to justice). Policies and actions to bridge the digital divide as a means of promoting access to justice should engage with the inequalities in these stages of the technology appropriation process. After reviewing the literature on the digital divide, I generate the diagram below to demonstrate the divides at stages of the technology appropriation process.



### The Technological Innovation -

Figure 2:1: Digital Access/Divides Model



This diagram shows that not all those who are technologically privileged will access a technological innovation, but only those who are fully privileged will harness its potential; for example, online legal resources and ODR services address barriers to justice. This group will meet the requirements of each stage of appropriation:

- i. Those who want the technological innovation, such as for online legal resources, and
- ii. Have the means of accessing it, and
- iii. Know how to use it, and
- iv. Use the medium of access for the technological innovation.

Those who are underprivileged are unlikely to access the technological innovation. This group consists of:

- i. Those who do not wish to use the technological innovation, or
- ii. Want to use it but do not have the means of access, or
- iii. Want to use it and have the means to access it, but do not know how to use it, or
- iv. Want to use it, have the means of access, and know how to use it, but use the medium of access for other activities (or for non-beneficial purposes, such as for entertainment activities, rather than to enhance their access to justice).

The review shows that in Ghana and Canada, individuals are motivated to use technological innovations for access to justice based on, among other factors, the quality of information on the innovation; awareness of its existence; its accessibility; its capabilities; their involvement in its development; the level of complexity of its navigation and information, and their own training and experience in the use of computing and digital devices. However, after developing a positive attitude towards the technological innovation, there needs to be a means of accessing it and once this has been achieved, users must possess the technical, operational, cognitive and socio-emotional literacy to leverage it. Moreover, access to the technological innovation should not then be extended to other activities (or non-beneficial activities).

Using this framework as a guide, the following chapters examine the extent to which technology can or may advance access to justice. Each chapter focuses on the potential of Web-based legal information, online dispute resolution, and videoconferencing for widening and facilitating access to justice, as well as the extent to which digital divides affect the diffusion rate of these

technologies. It examines the subject from a Ghanaian and Canadian perspective, with a view to identifying any lessons from the latter to the former and vice versa. Canada's institutions of justice are currently establishing mechanisms for harnessing the benefits of Web-based legal information, ODR and videoconferencing. At the same time, they have designed or are in the midst of designing proactive policies and measures to address the negative impact of the digital divide on access to justice. These mechanisms and those recommended in this thesis provide useful lessons for Ghana in its quest to enhance access to justice by means of technology.

## CHAPTER THREE: WEB-BASED LEGAL INFORMATION

### 3.1 The Potential of Web-based Legal Information

Access to information is a prerequisite of justice.<sup>145</sup> The policy of using the Internet to promote access to justice hinges on the philosophy that the basic or first step towards technology use to assist dispute resolution is to provide information that will enable disputes to be avoided as well as resolved. This is in addition to providing a straightforward guide to the law and sources of further assistance.<sup>146</sup> Web-based legal information is one of the most efficient and effective means of supplementing the information available to the general public on legal matters.<sup>147</sup> It presents significant opportunities for ameliorating the barriers to justice, i.e. the informational, financial barriers, physical and material barriers to accessing institutions of justice. Being information- and document-intensive, the Internet can be used to create, store and share a vast amount of legal information at a modest cost, compared to manual printing and publication.<sup>148</sup> In addition, online databases of legal information are equipped with increasingly sophisticated search engines, enhancing the efficiency of legal research.<sup>149</sup> All in all, the Internet can render

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<sup>145</sup> Amanda Dodge, “Access to Justice Metrics Informed by the Voices of Marginalized Community Members: Themes, Definitions and Recommendations Arising from Community Consultations” (Ottawa: Canadian Bar Association 2013) at 19 – 21, online: Canadian Bar Association [www.cba.org/CBA/cle/PDF/JUST13\\_Paper\\_Dodge.pdf](http://www.cba.org/CBA/cle/PDF/JUST13_Paper_Dodge.pdf).

<sup>146</sup> Michael Legg, “The Future of Dispute Resolution: Online ADR And Online Courts” Australasian Dispute Resolution J [Forthcoming in 2016].

<sup>147</sup> Action Committee, “Report of the Access to Legal Services Working Group”, *supra* note 11 at 8; Mariya Badeva-Bright & Dr Oluwatoyin Badejogbin “Free Access to The Law in Africa” in Southern Africa Litigation Centre, Judiciary of Malawi & National Association of Women Judges and Magistrates of Botswana, *Goal 16 of the Sustainable Development Goals: Perspectives from Judges and Lawyers in Southern Africa on Promoting Rule of Law and Equal Access to Justice* (Johannesburg, South Africa: Southern Africa Litigation Centre, 2016) at 150 – 155.

<sup>148</sup> See Daniel Poulin, “Open Access to Law in Developing Countries”, (2004) 9:12 *First Monday* 1 at 8 – 9, online: [firstmonday.org/ojs/index.php/fm/article/view/1193/1113](http://firstmonday.org/ojs/index.php/fm/article/view/1193/1113).

<sup>149</sup> See The Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada, “The Legal Profession in the 21st Century” (Canadian Bar Association Plenary, Calgary, Alberta, 2015), online: Supreme Court of Canada [www.scc-csc.ca/court-cour/judges-juges/spe-dis/bm-2015-08-14-eng.aspx](http://www.scc-csc.ca/court-cour/judges-juges/spe-dis/bm-2015-08-14-eng.aspx).

computer-based legal research far more efficient and effective than manual research in terms of time.<sup>150</sup>

Web-based legal information remedies financial barriers to justice. Open access enables clients to work on simple matters, while lawyers concentrate on problems requiring their expert judgment, deep analysis and careful planning.<sup>151</sup> Open access also equips alternative legal service providers, such as friends and family members; advocates; volunteers; librarians; community organizations, and paralegals to educate others about their rights and obligations, as well as about the resources and services available to assist them in addressing a legal problem.<sup>152</sup> These provisions will result in a better-informed public and drive down the cost of basic legal services, due to less reliance on litigation and lawyers.<sup>153</sup> The conveniences that accompany online research will also reduce the cost of legal services. The importance of online legal research in reducing the cost of legal services came to bear in *Encorp Pacific (Canada) v B.C. Bottle Depot Association*.<sup>154</sup> Here, the Court reduced charges for online legal research by half: \$776.98 to \$388.49, together with Goods and Services Tax. The Court held that, “online efficiencies almost certainly reduce time spent by counsel, and should be recognized [in charges for legal research]”.<sup>155</sup> Hence, insofar as many lawyers charge by the hour, Web-based legal information and the time it saves can reduce the amount charged by a lawyer for a given research activity.<sup>156</sup>

Moreover, Web-based legal information transcends distance and thus helps overcome some of the physical and material barriers to accessing institutions of justice. According to Bailey, Burkell and Reynolds,

individuals who might not be able to visit libraries or court registries due to reasons of remoteness, accessibility, scheduling conflicts, or family

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<sup>150</sup> *Wadden v 470139 B.C. Ltd.*, 2014 BCSC 747 at para 30 (CanLII).

<sup>151</sup> See Elizabeth McKibbin & Sue Scott, “Community Access to Legal Information” (2000) 8 Austl L Libr 17 at 18.

<sup>152</sup> See Maurits Barendrecht, “Legal Aid, Accessible Courts or Legal Information? Three Access to Justice Strategies Compared” (2011) 11:1 Global Jurist 1 at 8.

<sup>153</sup> See Action Committee, “Report of the Access to Legal Services Working Group”, *supra* note 11 at 6; Maurits Barendrecht, “Legal Aid, Accessible Courts and Legal Information? Three Access to Justice Strategies Compared” (2011) 11:1 Global Jurist 1 at 8.

<sup>154</sup> *Encorp Pacific (Canada) v B.C. Bottle Depot Association*, 2009 BCSC 1657 (CanLII).

<sup>155</sup> *Ibid* at para 33.

<sup>156</sup> Bouclin, McGill & Salyzyn, however, argue that legal apps, or Web-based legal information, will do little to overcome non-financial barriers, such as any psychological, informational or physical barriers that may prevent individuals from contacting a lawyer in the first place. See Bouclin, McGill & Salyzyn, *supra* note 24.

responsibilities (among other reasons), would have additional opportunities to access and engage with legal information.<sup>157</sup>

These opportunities accompanying Web-based legal information address the challenges associated with geographical imbalances in the distribution of public legal education and information organizations. Persons with physical disabilities could thereby also access legal information, without having to physically travel to the relevant offices and this also applies to the population of rural areas. Hence, open access to legal information via the Web makes legal information available to a much broader audience and allows them to access it in a far more extensive range of situations.<sup>158</sup> As a result, it becomes possible for individuals to access the legal information they seek, wherever and whenever they wish.

These opportunities presented by the Internet have advanced the pathways to justice, i.e. legal health promotion, dispute avoidance, dispute management and adjudication. Access to legal information increases the public's consciousness of their rights and therefore empowers them to decide whether to exercise them. Knowledge of rights, obligations and responsibilities can then assist in preventing disputes based on misunderstandings. It is also easier for individuals to determine what is fair, once they are appropriately informed.<sup>159</sup> Furthermore, Bailey, Burkell and Reynolds argue that open access to legal information demystifies "the law by providing individual litigants (or potential litigants) with 'tools' (legislation, case law, or basic information on substantive legal issues, for instance) that they can use in the context of a legal dispute".<sup>160</sup>

This section has highlighted the potential of the Internet to promote access to legal information. Such technology presents significant opportunities for addressing informational, financial, physical and material barriers to justice. Moreover, Web-based legal information advances the four pathways to justice: legal health promotion, dispute avoidance, dispute management and adjudication. It achieves this based on the vast amount of legal information it can provide to a broad spectrum of individuals in diverse situations.

The extent to which Web-based legal information can permeate the Ghanaian and the Canadian justice systems to promote access to justice, however, will depend on how digital access

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<sup>157</sup> Bailey, Burkell & Reynolds, *supra* note 3 at 195.

<sup>158</sup> *Ibid.*

<sup>159</sup> Action Committee, "Report of the Access to Legal Services Working Group", *supra* note 11 at 5.

<sup>160</sup> Bailey, Burkell & Reynolds, *supra* note 3 at 196.

variables, such as motivation to access, physical and material access, literacy and usage access influence the innovation's diffusion rate. The following section examines the extent to which Web-based legal information can permeate or has permeated the justice system in Ghana and Canada to promote access to legal information, with a view to identifying any lessons for proactive policies and actions.

## **3.2 Web-based Legal Information and the Digital Divides**

The literature highlights the digital divide as a major obstacle to using the Internet to access legal information.<sup>161</sup> As Gorham has stated: “[a]ny discussion of information barriers and disadvantages should begin with an acknowledgment of the digital divide.”<sup>162</sup> The extent to which Web-based legal information can diffuse or is diffusing into the justice system in Ghana and Canada, with the aim of enhancing access to justice, depends on how it interacts with the four variables in the appropriation process for a digital technology, i.e. motivation, physical and material factors, literacy and usage. This section attempts to examine how the inequalities in these variables influence the success of Web-based legal information to facilitate access to justice in Ghana and Canada.

### **3.2.1 Motivational Access**

Ghanaians and Canadians require motivation to adopt and use Web-based legal information. Whether they are motivated in this way will depend on the external variables of motivational access, such as awareness of the system's existence and capabilities; the quality of information produced by the system; the complexity of navigation and information; their computer training and experience, and the involvement of the intended users in the system's development. In the remainder of this section, the thesis will focus on awareness and information quality, which influence *perceived usefulness*, and the complexity of navigation and information, which influence *perceived ease of use*.

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<sup>161</sup> See e.g. Ursula Gorham, *Access to Information, technology, and Justice: A Critical Intersection* (Maryland; USA: Rowman & Littlefield, 2017) at 28; Bailey, Burkell & Reynolds, *supra* note 3 at 199 - 200; Hughes, “Access to Justice Through Generic Solution”, *supra* note 98 at 17 – 20.

<sup>162</sup> See Ursula Gorham, *Access to Information, technology, and Justice: A Critical Intersection* (Maryland; USA: Rowman & Littlefield, 2017) at 28.

*Information Quality:* The level of quality legal information content on a website will matter for measuring the rate at which a site is visited, used, adopted or revisited. As Cullen has pointed out: “[o]ne significant reason why some groups choose not to access the Internet is because the content is not relevant or interesting to them.”<sup>163</sup> Hence, the quality of the website content will influence the number of people visiting the site and the frequency with which they revisit or reuse it. Studies have found that the quality of legal information is high if it is: complete and comprehensive, updated and current, accurate and reliable, and addresses important issues.<sup>164</sup> Moreover, I argue that the fact of whether a site addresses important issues should be measured against its purpose and the intended users, rather than the purpose of the potential users.<sup>165</sup> Hence, the quality of the site content will measure whether it provides complete and comprehensive, updated and current, and accurate and reliable legal information corresponding to the most important issues of its intended users.

There are numerous sources of legal information in Canada, covering a wide range of needs. Among others, the site of the Canadian Legal Information Institute (CanLII) provides free and open access to one million documents across over 200 databases of court judgments, tribunal decisions, statutes and regulations from all Canadian jurisdictions.<sup>166</sup> The intended users of CanLII are members of the legal community and it takes significant steps to “[s]atisfy legal community needs with a free, comprehensive and robust legal research service”.<sup>167</sup> CanLII has developed a positive attitude of *perceived usefulness* among its intended users, because “reliance on CanLII as a share of online usage is found at a consistently high level across all lawyers”.<sup>168</sup> However, although one segment of the population, constituting potential users of CanLII, may be interested in the cases and legislation provided by this site, many self-justice seekers may not

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<sup>163</sup> See Rowena Cullen, “Addressing the Digital Divide” (2001) 25:5 Online Information Rev 311 at 315. See also Julia R. Gordon, “Legal Services and The Digital Divide” (2001) 12 Alb LJ Sci & Tech 809 at 812.

<sup>164</sup> Barbara Richards, “Research Findings and Recommendations: Family Law In BC Website” in Legal Services Society of British Columbia, “Public Legal Education and Information Resources Accessibility Initiative” (2012), online: [www.lss.bc.ca/assets/aboutUs/reports/PLEI/pleiResourcesAIRReport.pdf](http://www.lss.bc.ca/assets/aboutUs/reports/PLEI/pleiResourcesAIRReport.pdf). See also Sherry MacLennan, “Empowerment, Technology, and Family Law” in Karim Benyekhlef et al, *eAccess to Justice* (Canada: University of Ottawa Press, 2016) at 200.

<sup>165</sup> Such limitation ensures the viability of the site and the design of appropriate content to meet the circumstances of its intended users.

<sup>166</sup> See Canadian Legal Information Institute [www.canlii.org/en/info/about.html](http://www.canlii.org/en/info/about.html).

<sup>167</sup> Canadian Legal Information Institute [www.canlii.org/en/info/board.html](http://www.canlii.org/en/info/board.html).

<sup>168</sup> CorbinPartners Inc, “National Client Needs Study: Summary Report” (Canadian Legal Information Institute, 2012), online: [www.canlii.org/en/info/CanLII2012SurveySummary\\_en.pdf](http://www.canlii.org/en/info/CanLII2012SurveySummary_en.pdf). The study revealed that nine out of 10 lawyers (including notaries and law students) use CanLII for legal research, and 45% of the lawyers have also increased their usage of CanLII.

wish to patronize CanLII as a means of understanding and exercising their rights. In its section, ‘Frequently Asked Questions’, CanLII provides the following feedback to a question which reads: “I have a legal problem. Can you help me?”

No, CanLII does not give legal advice. CanLII publishes basic legal documents for the convenience of its users, but the documents alone are not sufficient to provide individuals with guidance as to their rights and obligations.<sup>169</sup>

The Ghana Legal Information Institute (GhaLII) has adopted a similar ideology, as it does not offer professional or legal advice either.<sup>170</sup> This limitation of the GhaLII and CanLII databases negates their *perceived usefulness* among potential users (i.e. self-justice seekers).

Accordingly, members of the legal community - the intended users of CanLII - are likely to be made up of ‘wants’ for CanLII’s site; while members of the public (or self-justice seekers) – its potential users - would constitute its ‘want nots’. In such instances, the available remedy for self-justice seekers of online legal resources would comprise sites of public legal education and information providers, aimed at “helping the public understand and exercise their legal rights”.<sup>171</sup>

There is an enormous amount of publicly available, justice-related legal information in Canada, together with active and creative public legal education and information organizations. These online sources host a wide variety of legal information for the public,<sup>172</sup> providing information about the legal system, and the public’s rights and responsibilities.<sup>173</sup> The sites of these organizations also provide information on the steps to take when addressing a legal problem, including the resources (e.g. legal documents) and services (e.g. pro bono and social services),<sup>174</sup>

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<sup>169</sup> “Frequently Asked Questions (FAQ)”, online: CanLII [www.canlii.org/en/info/faq.html#5.1](http://www.canlii.org/en/info/faq.html#5.1).

<sup>170</sup> See Ghana Legal Information Institute: [ghalii.org/terms-of-use](http://ghalii.org/terms-of-use).

<sup>171</sup> Patricia Byrne, “Public Legal Education and Information Formats and Delivery Channels” (Legal Services Society & Law Foundation of British Columbia, 2014), online: Legal Aid British Columbia <http://legalaidsociety.ca/assets/aboutUs/reports/PLEI/pleiFormatsAndDeliveryChannelsJuly2014.pdf>.

<sup>172</sup> For an inventory of such sites, see “Canadian Public Legal Education (PLE) Organizations”, online: Law Central [www.lawcentralalberta.ca/en/canadian-public-legal-education-ple-organizations](http://www.lawcentralalberta.ca/en/canadian-public-legal-education-ple-organizations); Elena Haba, “Selected Inventory of Initiatives to Improve Access to Justice for the Middle Class: A Working Paper for Underexplored Alternatives for the Middle Class” (Ottawa: Canadian Bar Association, 2013) at 9 – 22.

<sup>173</sup> See e.g. Community Legal Education Ontario [yourlegallrights.on.ca/](http://yourlegallrights.on.ca/); Justice Education Society [www.justiceeducation.ca/](http://www.justiceeducation.ca/); Law Central, Alberta [www.lawcentralalberta.ca/en/](http://www.lawcentralalberta.ca/en/); Public Legal Education Association, Saskatchewan [www.plea.org/](http://www.plea.org/).

<sup>174</sup> See e.g. Law Central, Alberta [www.lawcentralalberta.ca/preparing](http://www.lawcentralalberta.ca/preparing); Justice Education Society [www.justiceeducation.ca/content/legal-help?topic=Legal+Help+in+BC](http://www.justiceeducation.ca/content/legal-help?topic=Legal+Help+in+BC); Community Legal Education Ontario [stepstojustice.ca/](http://stepstojustice.ca/).



and free document assembly services.<sup>175</sup> In addition, the websites of virtually all the courts provide legal information, including guides for trials and appeals; criminal trials; provincial offence cases; appeals in provincial offence cases; practice directions; court forms; legislation, and court rules.<sup>176</sup> However, some of these online legal resources have significant limitations, which can adversely affect their *perceived usefulness*. It can be extremely challenging to determine whether the online databases of some of the organizations provide complete, comprehensive, updated, current, accurate and reliable legal information to address important issues raised by self-justice seekers, these being its intended users. In a 2013 survey conducted to gather the experiences of self-represented litigants, all the respondents indicated that they had become disillusioned and disappointed, once they had started working with online resources. The respondents identified these weaknesses in online sources of legal information as being:

an emphasis on substantive legal information and an absence of information on practical tasks like filing or serving, advice on negotiation or a strategy for talking to the other side, presentation techniques, or even legal procedure; often directed them to other sites (sometimes with broken links) with inconsistent information; and multiplicity of sites with no means of differentiating which is the most ‘legitimate’.<sup>177</sup>

These weaknesses delimit the quality of the content in the legal information offered by some of Canada’s public legal education and information organizations. The intended users of sites with low quality content are thus likely to develop a negative attitude of *perceived usefulness* towards such sites, as they fail to address the issues of importance to them. Hence, a divide opens up in motivation to access the sites of public legal education and information providers. For example, while some self-justice seekers are motivated to visit and leverage sites established by active and creative legal information providers, other self-justice seekers may not wish to visit sites with low quality information. Hence, they will continue to battle with informational, financial, physical and material barriers to justice; while the foundational goal of helping the public to understand and exercise legal rights remains theoretical rather than practical, if the online legal resources on the above-mentioned sites are developed in a piecemeal fashion.

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<sup>175</sup> See e.g. Family Law Saskatchewan [familylaw.plea.org/](http://familylaw.plea.org/); MyLawBC [www.mylawbc.com/](http://www.mylawbc.com/).

<sup>176</sup> See e.g. Ontario Court of Justice [www.ontariocourts.ca/ocj/](http://www.ontariocourts.ca/ocj/); Alberta Courts [albertacourts.ca/publications-and-forms](http://albertacourts.ca/publications-and-forms); Courts of Saskatchewan [www.sasklawcourts.ca/](http://www.sasklawcourts.ca/).

<sup>177</sup> Macfarlane, *supra* note 43 at 10.

The weaknesses of sites with low quality legal information in their content may be attributed to factors such as, 1) a lack of consultation with the public to determine the information they need,<sup>178</sup> 2) the absence of a sustainable justice funding model and expertise, and 3) the limited involvement of government institutions, such as the Ministry of Justice and Commission on Human Rights and Administrative Justice, to signal the legitimacy of the information. The latter two issues may result from the absence of collaboration and coordination among institutions of justice.<sup>179</sup>

In addition, Ghana's public legal education and information providers arguably fail to provide complete and comprehensive, updated or current legal information that addresses issues of importance to their intended users, i.e. self-justice seekers. The Commission on Human Rights and Administrative Justice's website, for instance, could serve as a starting point to help users learn to identify various legal problems and human rights violations. However, there are currently many deficiencies in the substantive quality of the information available for justice seekers. For instance, the Commission does not provide information on the steps to take when addressing a legal problem, or on the necessary resources (such as legal documents), services (such as pro bono and social services) and document assembly services.<sup>180</sup> The low quality of the legal information that results may have contributed to the low patronage of its site. In fact, one 2013 study conducted on the digital divides in Ghana found that Ghanaians do not see the Government's online services as widely available or useful, and only 12% reported using the Internet to access Government sites.<sup>181</sup> This problem may be attributed to the fact that although Ghana's institutions of justice envision the Internet as providing significant opportunities for providing supplementary legal information to the public, they have not rigorously utilized its potential for access to legal information.

In summary, there are deficiencies in the quality legal information available to those wishing to employ online legal resources as a means of addressing informational, financial, physical and

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<sup>178</sup> As Amanda Dodge pointed out in her presentation at the CBA's Envisioning Equal Justice Summit: "when we gather to dialogue and strategize about increasing access to justice, if we do so without listening to the voices of those we are trying to serve, we risk developing ineffective measures, as well as the legitimacy of our efforts." See CBA, *Equal Justice*, *supra* note 19 at 16.

<sup>179</sup> See generally Brent Cotter, "Thoughts on a Coordinated and Comprehensive Approach to Access to Justice in Canada" (2012) 63 UNBLJ 54.

<sup>180</sup> See Ghana Commission on Human Rights and Administrative Justice, [www.chrajghana.com/?page\\_id=43](http://www.chrajghana.com/?page_id=43).

<sup>181</sup> See GMC & GIFEC, "The Digital Divide in Ghana", *supra* note 100 at 11.

material barriers to justice, or of understanding and exercising their legal rights. Arguably, Web-based legal information has not widely diffused into the justice systems in either Ghana or Canada as a contribution to greater access to justice. For instance, neither CanLII nor GhaLII provide complete or key information for self-justice seekers, because their primary focus is on case law and legislation. Sadly, many justice-related information sites in Canada fail to provide quality legal information for self-justice seekers and likewise, public legal education and information sites in Ghana display significant limitations. I recommend that public legal education and information organizations take steps to provide quality legal information for the public. To develop a positive attitude in the targeted population of *perceived usefulness* of these sites, providers of legal information in both Ghana and Canada need to implement proactive policies and actions to improve the quality of legal information they offer. I argue that the creation of a national legal information portal (for primary sources of law and justice-related information) holds significant opportunities for addressing these challenges. CanLII and GhaLII could potentially coordinate with the various public legal education and information providers in each country to include justice-related information in its database. At provincial and territorial level, public legal education and information providers could also collaborate to build a high-quality justice-related legal information portal for each Province or Territory, which could then be embedded in CanLII's site. This initiative could equally be launched by public legal education and information providers in Ghana.

*Awareness:* Awareness of the existence, accessibility and benefits of a technology will influence an individual's decision to use that technology.<sup>182</sup> It influences the rate at which the public will visit a site. Thus, even when the content of the legal information presented on a site satisfies the basic requirements for quality, the public will not visit the site unless they know of its existence and accompanying benefits. Those who are aware of the existence and benefits of online legal resources are admittedly better placed to explore the opportunities that such resources present for addressing their legal problems, while persons who are unaware of online legal resources will continue to embattle with the barriers to justice.

Awareness of the existence and capabilities of online legal resources is crucial for measuring the extent to which they have diffused into the Canadian justice system to promote access to justice.

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<sup>182</sup> Rogers, *Diffusion of Innovations*, *supra* note 111 at 163 – 169.

Admittedly, many Canadians lack knowledge of the wealth of resources available online.<sup>183</sup> A 2016 Survey conducted by The Action Group on Access to Justice, Ontario revealed that only 26% of Ontarians seeking legal advice use online legal resources although there is abundant information and technological connection in the province.<sup>184</sup> I argue that, though not all Ontarians may want to utilise online legal resources, a major contributing factor to the low patronage of these resources is a lack of awareness of their existence and capabilities. For example, about 40% of community legal clinics and community based organizations across Ontario who participated in an online survey on public legal education and information in Ontario communities indicated that most of their clients are often unaware of online legal information and resources. Others mentioned that they wished more online forms were available, and noted that perhaps these forms are available and that they were unaware of them.<sup>185</sup>

Ensuring greater awareness should also be of major concern to Ghana's legal information providers, as most Ghanaians lack awareness of the existence and the benefits of the Internet. A 2013 study on the digital divide in Ghana has found that most Ghanaians (65%) do not use the Internet, because they lack awareness of what it constitutes and those who are aware of its existence perceive it as being of little value.<sup>186</sup> Hence, the notion of Web-based legal information in Ghana may have minimal impact on improving access, if the general public are not sufficiently sensitized to the presence and benefits of legal information available to them through the Internet.

This section has shown that legal information providers in Ghana and Canada face significant challenges in using the Internet to enhance access to legal information, since the general population often lack awareness of the wealth of legal information available to them via this channel. The review of the literature on the digital divide shows that lack of knowledge of the existence and benefits of the Internet leads many people to conclude that the Internet is useless or

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<sup>183</sup> See e.g. Julie Mathews, Sarah Rimmington & Diana Vazquez, "Public Legal Education and Information in Ontario Communities: Formats and Delivery Channels" (Community Legal Education Ontario, 2013) at 20, 30; Alan Kilpatrick, "The Saskatchewan Access to Legal Information Project (SALI)" *Legal Sourcery* (May 25, 2017), online: [lsslib.wordpress.com/2017/05/25/the-saskatchewan-access-to-legal-information-project-sali/](http://lsslib.wordpress.com/2017/05/25/the-saskatchewan-access-to-legal-information-project-sali/).

<sup>184</sup> See The Action Group on Access to Justice (TAG), Ontario, "Public Perceptions of Access to Justice" (October 2016) at 3, online: [theactiongroup.ca/wp-content/uploads/2015/08/Abacus\\_TAG\\_Release\\_Oct14.pdf](http://theactiongroup.ca/wp-content/uploads/2015/08/Abacus_TAG_Release_Oct14.pdf).

<sup>185</sup> Mathews, Rimmington & Vazquez, *supra* note 183 at 20.

<sup>186</sup> See GMC & GIFEC, "The Digital Divide in Ghana", *supra* note 100 at 14 – 15. See also Cletus D Kuunifaa, "Access to Information Legislation as a Means to Achieve Transparency in Ghanaian Governance: Lessons from the Jamaican Experience" (2012) 38:2 IFLA J 175 – 181.

unnecessary. As da Silva and da Silva pointed out: “without the awareness of the technology it is impossible for someone to imagine that a particular technology might be a savior from socioeconomic troubles.”<sup>187</sup> Hence, the use of the Internet to enhance access to legal information may yield minimal effect, if the providers of legal information fail to undertake proactive steps and formulate suitable policies for increasing awareness. Such measures need to target the ‘want nots’ in relation to their sites, i.e. those who have decided not to use these sites in the first place, because of a lack of awareness of the wealth of legal information available to them via these means. These targeted individuals include those who may already be using the Internet, but remain unaware of sites created by legal information providers. They also include anyone deciding to avoid using the Internet in the first place.

*Complexity of Navigation and Information:* Aside from intended users developing a positive attitude of *perceived usefulness* through variables such as awareness and information quality, they also need to develop a positive attitude of *perceived ease of use* to visit and use the sites created by legal information providers. The way in which Web-based legal information operates or is structured will have a significant impact on the public’s *perceived ease of use*.<sup>188</sup> Their complexity of navigation and information can be tested against the level of ease involved in finding and utilising online information.<sup>189</sup> Finding relevant information amongst volumes of online legal resources is a critical first step in being able to leverage a site. This prerequisite is dependent on how well the online database concerned is structured to enable its users to “scan [the] information to identify what is relevant to them, and avoid being overwhelmed with large amounts of dense information on pages”.<sup>190</sup> The next critical step after finding the relevant information is the ability to make use of it. Here, Hughes identifies the complexity of terminology and information as salient elements affecting usability.<sup>191</sup>

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<sup>187</sup> Pereira da Silva & Loureiro da Silva, “Digital Inclusion and Electronic Government: Looking for Convergence in the Decade 1997-2008” in Information Resource Management Association, ed, *Digital Literacy: Concepts, Methodologies, Tools and Applications*, Vol 1 (Hershey; USA: Information Science Reference, 2013) at 1414.

<sup>188</sup> See Sherry MacLennan, “Empowerment, Technology, and Family Law” in Karim Benyekhlef et al, *eAccess to Justice* (Canada: University of Ottawa Press, 2016) at 200 – 201.

<sup>189</sup> See Mathews, Rimmington & Vazquez, *supra* note 183 at 22.

<sup>190</sup> See Barbara Richards, “Research Findings and Recommendations: Family Law In BC Website” in Legal Services Society of British Columbia, “Public Legal Education and Information Resources Accessibility Initiative” (2012), online: <http://www.lss.bc.ca/assets/aboutUs/reports/PLEI/pleiResourcesAIReport.pdf>.

<sup>191</sup> Hughes, “Access to Justice Through Generic Solution”, *supra* note 98 at 13.

CanLII has taken significant steps to increase its *perceived ease of use*, as it informs its users about how to leverage its search engine to find relevant information.<sup>192</sup> However, CanLII does not necessarily provide sufficient access for its users, particularly the general public, due to the complexity of its legal resources.<sup>193</sup> However, people who access CanLII's database for case law and legislation, must also be equipped to comprehend the information. Nevertheless, CanLII simply does not provide the sources that allow the law to be understood.<sup>194</sup> Without the necessary support, people who lack adequate knowledge of the features of case law and legislation cannot leverage the CanLII website. To help address this issue, the National Self-Represented Litigants Project has launched a vital research tool, known as 'CanLII Primer' to assist the public in understanding the resources available from CanLII and how to navigate and apply its vast resources.<sup>195</sup>

Aside from the above, those attempting to use the sites of many public legal education and information organisations face significant challenges in finding the relevant information.<sup>196</sup> In Ontario, two thirds of community-based public legal education and information organizations report that their clients are unable to find or make use of online information with ease.<sup>197</sup> A study conducted on the Family Law BC website found complex sentences and undefined terminologies, as well as difficulty with reading, due to layout and design issues. These represented some of the main problems of the site.<sup>198</sup> The sites of many of these organizations have also directed users to other sites, giving rise to inconsistent information and difficulties in navigation, with URL links frequently broken or not working (including on Government sites).<sup>199</sup> Users endeavouring to use court sites also encountered difficulties, as many court forms contain unclear grammatical expressions and numerous unexplained technical terms.<sup>200</sup> The complexity of navigating the sites of legal information providers and courts, as well as of the information

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<sup>192</sup> See "Frequently Asked Question: Navigation and Search", online: [www.canlii.org/en/info/faq.html#5.1](http://www.canlii.org/en/info/faq.html#5.1).

<sup>193</sup> See Max David King, "Free and Open Access to Legal Resources Through CanLII" (2013) 38 Can L Libr Rev 18

<sup>194</sup> *Ibid.*

<sup>195</sup> Tamara Thomas, "Legal Research Principles and CanLII Navigation for Self-Represented Litigants" (National Self-Represented Litigants Project, 2015), online: NSRLP [representingyourselfcanada.com/wp-content/uploads/2016/09/nsrlp-canlii-primer-9302016.pdf](http://representingyourselfcanada.com/wp-content/uploads/2016/09/nsrlp-canlii-primer-9302016.pdf).

<sup>196</sup> See Mathews, Rimmington & Vazquez, *supra* note 183 at 22.

<sup>197</sup> *Ibid.*

<sup>198</sup> See Joan Acosta, Patty Bossort & Diana Twiss, "Literacy Review for the Legal Services Society", (2012) at 94 - 100, online: Legal Services Society British Columbia [www.lss.bc.ca/assets/aboutUs/reports/PLEI/pleiResourcesAIRReport.pdf](http://www.lss.bc.ca/assets/aboutUs/reports/PLEI/pleiResourcesAIRReport.pdf).

<sup>199</sup> Macfarlane, *supra* note 43 at 10.

<sup>200</sup> *Ibid.*

they contain, can negatively affect users' *perceived ease of use*, thus adversely affecting their use of such sites.

Another major issue of concern is the lack of provision of facilities for persons with physical and mental disabilities. Many Canadian websites are not designed to accommodate persons with disabilities. This problem came to bear in *Canada (Attorney General) v Jodhan*, where the Court observed that "Ms. Jodhan's inability to access certain departmental websites was representative of a system-wide failure by many of the 106 government departments and agencies of the Government of Canada to make their websites accessible to the visually impaired".<sup>201</sup> It is imperative that public legal information providers take steps to design their websites to accommodate persons with disabilities.<sup>202</sup> Without such measures, this segment of the population will continue to battle with barriers to justice.

It is somewhat premature to assess the complexity of navigation and information with regard at GhaLII, since the site was launched in October 2016 and it is still in its embryonic stages. In the same vein, it is unusual to be in a position to assess the sites of public legal education and information organizations in Ghana, as in many cases, they have yet to develop them. In this regard, the accessibility challenges involved in the sites of public legal information providers in Canada provide useful lessons for legal information providers in Ghana.

This subsection has shown that the use of the Internet to promote access to legal information in Canada and Ghana may prove to have only minimal impact and could even widen the justice gap, due to complex navigation and information. Moreover, many segments of the population, including lawyers with disabilities, may face barriers to leveraging the sites of legal information providers, due to a lack of the support required to enable them to find and understand relevant online legal resources. Those who are privileged to find and understand the information sourced from legal information providers will continue to enhance their knowledge of their rights, while those who visit sites characterized by complex navigation are likely to abandon the idea and continue to struggle with informational, financial, physical and material barriers to justice.

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<sup>201</sup> *Canada (Attorney General) v Jodhan*, 2012 FCA 161 (CanLII).

<sup>202</sup> For strategies, guidelines and resources to make the Web more accessible to persons with disabilities, see the Web Accessibility Initiative at [www.w3.org/WAI/](http://www.w3.org/WAI/).

Hence, the goal of using the Internet to promote access to legal information remains theoretical rather than practical, so long as these challenges are not addressed.

### **3.2.2 Physical and Material Access**

Individuals who develop an interest in using online legal resources must have the means to access these resources. Physical and material access are therefore further important determinants of the extent to which Web-based legal information can permeate the justice system in Ghana and Canada, in order to facilitate access to legal information. The differences in physical access and material access to online legal resources will influence this phenomenon. For instance, those who are physically connected to the Internet are well-positioned to take advantage of online legal resources, while those without access will continue to struggle with the barriers to justice. In the material access divide thesis, individuals who are connected to the Internet via computers can easily use online legal resources, because computers are characterized by more convenient text input, large screen size and easy-to-navigate menus. In contrast, mobile Internet-users can connect to online legal resources from anywhere they wish, due to the portability of mobile phones. However, this phenomenon opens up a digital divide between computer Internet-users and mobile Internet-users. Moreover, individuals connected to the Internet via high-speed access (or broadband) can easily access online legal resources; such connections providing sufficient transmission capacity and speed for high quality voice, data and video applications. Low-speed access lacks these features. Therefore, computer Internet-users connected via high-speed access are well-positioned to easily access online legal resources, in contrast to mobile Internet-users with low-speed access (or even high-speed access).

Inequalities in physical and material access will influence the rate at which Canadians utilize online legal resources. More than 80% of Canadian households have access to broadband service speeds of at least 50 Mbps.<sup>203</sup> Aside from this, there is also free access at many libraries and in many retail and community locations.<sup>204</sup> An enabling technological environment of this nature indicates that the physical access and connection divides (i.e. broadband or non-broadband use)

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<sup>203</sup> See Canadian Radio-television and Telecommunications Commission, *Communications Monitoring Report, 2016* (Ontario: Canadian Radio-television and Telecommunications Commission, 2016) at 32.

<sup>204</sup> Canadian Library Association, "CLA Statement on Public Access to the Internet" (2015), online: [cla.ca/wp-content/uploads/CLA\\_Stmt\\_Public\\_Access\\_to\\_Internet\\_Feb2015.pdf](http://cla.ca/wp-content/uploads/CLA_Stmt_Public_Access_to_Internet_Feb2015.pdf).



may not be major problems in Canada. However, device divides may present some difficulties, as more than 21% of Canadians access the Internet via mobile phones, as compared to 61% via computers.<sup>205</sup> Mobile Internet-users are, for example, challenged by less support for text input, small screen size, menus that are difficult to navigate, challenging input facilities and pages that are not formatted for mobile use. These limitations of mobile phones affect users' ability to perform online activities easily. Lachance found that less than 10% of CanLII's visitors access the site from a mobile device (smartphone or tablet). As Lachance opined, one reason for this is that statutes and long court judgments are not always easily digested on a small screen.<sup>206</sup> As a result, computer-Internet users are privileged to use online legal resources, even though they face significant problems with portability. This means that their places of access are more limited, as compared to mobile users. This discourse shows that although the physical access divide and connection divide may not be a problem in Canada, there are still divides between the different digital devices used for access.

Furthermore, legal information providers face huge challenges regarding physical access and material access divides. A 2013 survey on the digital divide in Ghana reported that only 14.2% of Ghanaians use the Internet.<sup>207</sup> This means that the vast majority of Ghanaians who do not use the Internet (85.8%) are excluded from accessing online legal resources. A further problem exists in the form of the device divide. The most common device in Ghana is the mobile phone (60%), with significantly less computer usage (20%). Hence, few Ghanaians have easy access to online legal resources. Finally, divides may be observed in the type of connection available. The National Communication Authority found a high level of mobile data subscription among Ghanaians (15.3 million gigabytes) with low broadband usage (2.65 million gigabytes).<sup>208</sup> These data show that there is less use of broadband than mobile data usage in Ghana and this gap has an adverse effect on the rate at which Ghanaians perform online activities.

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<sup>205</sup> Canadian Internet Registration Authority, "CIRA Internet Factbook 2016", online: [cira.ca/factbook/domain-industry-data-and-canadian-Internet-trends/internet-use-canada](http://cira.ca/factbook/domain-industry-data-and-canadian-Internet-trends/internet-use-canada).

<sup>206</sup> See Colin Lachance, "Social Media and Access to Quality Legal Information" (16 March 2014) *Canadian Forum on Civil Justice*, online: [www.cfcj-fcjc.org/a2jblog/social-media-and-access-to-quality-legal-information](http://www.cfcj-fcjc.org/a2jblog/social-media-and-access-to-quality-legal-information). See also Mathews, Rimmington & Vazquez, *supra* note 183 at 21.

<sup>207</sup> See GMC & GIFEC, "The Digital Divide in Ghana", *supra* note 100 at 14 – 15.

<sup>208</sup> See National Communications Authority, Ghana, "2016 Quarterly Statistical Bulletin on Communications in Ghana: Second Quarter" at 3.

It is subsequently clear that Web-based legal information will diffuse slowly into the justice system in Ghana to facilitate access to legal information. Ghanaians connected to the Internet via computers and broadband are privileged to be able to access online legal resources more easily than fellow Ghanaians who are not connected to the Internet, or who connect purely via mobile devices and at slow connection speeds. Ghana's institutions of justice could therefore collaborate to undertake proactive policies and programmes, in order to address the inequitable distribution of material resources allowing public access, particularly access by low-income and rural communities. Such policies may include mechanisms to increase computer and Internet capacity in libraries, especially in rural communities, legal aid organizations and community legal clinics.

### 3.2.3 Digital Literacy

After the intended users have developed a positive attitude of *perceived usefulness* and *perceived ease of use*, and have acquired a physical connection, they must then have sufficient digital literacy to leverage a website. The literature identifies digital literacy as a major determinant of the digital divide among online legal information seekers.<sup>209</sup> Closing the physical and material access gap does not necessarily empower Internet users to appropriate the benefits of technology.<sup>210</sup> Physical and material access to a website only empowers those who know how to use it based on their technical, cognitive and socio-emotional literacy; hence the need for proactive policies and actions to increase the comprehensibility of online legal resources. These mechanisms should be directed at the three major domains of digital literacy: technical, cognitive and socio-emotional.<sup>211</sup> The following subsections elaborate on the dimension of digital literacy in their Ghanaian and Canadian context.

*Technical literacy:* Users of Web-based legal information require the technical literacy to access and leverage Web-based legal information. Ng conceptualizes technical literacy as the technical and operational literacy to carry out basic computer-based operations and to access resources, while also effectively searching and identifying information for the purposes of research and

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<sup>209</sup> See Hughes, "Access to Justice Through Generic Solution", *supra* note 98 at 13 – 15; 18 – 20; Bonnie Rose Hough, "Let's Not Make It Worse: Issues to Consider in Adopting New Technology" in James E Cabral *et al*, "Using Technology to Enhance Access to Justice" (2012) 26:1 Harv JL & Tech 241 at 262.

<sup>210</sup> Mike Colledge & Michael Haight, "The risk of building infrastructure without building digital literacy" *The Globe and Mail* (September 16, 2016), online: [www.theglobeandmail.com/report-on-business/rob-commentary/the-risk-of-building-infrastructure-without-building-digital-literacy/article32043633/](http://www.theglobeandmail.com/report-on-business/rob-commentary/the-risk-of-building-infrastructure-without-building-digital-literacy/article32043633/).

<sup>211</sup> See Ng, *supra* note 129 at 1068.

content learning.<sup>212</sup> It may be deduced from this concept that intended users of Web-based legal information require two major technical literacies: i) the basic set of skills required for using computers or Internet technology, including turning on and shutting down a computer; using a keyboard and mouse or touchscreen; opening a folder, and saving media (text, video and documents, such as pdfs and docs) from the Web, and ii) research skills requiring digital functionalities to access information, such as the use of search engines, and opening or closing appropriate hyperlinks.

The extent to which the Internet can advance access to information in Ghana and Canada will depend on these dimensions of technical literacy. Of the Canadians who do not use the internet, most do not use it because of their lack of skill in this area, or because they find the Internet and computers too difficult to use.<sup>213</sup> Most Ghanaians also find it difficult to use computers and the Internet.<sup>214</sup> These findings show that a section of the population in Ghana and Canada may not have the required technical literacy to leverage Web-based legal information. There is consequently a need to assist those who lack the technical literacy to use online legal resources. Public libraries, legal aid organizations and community legal clinics can all play a role in providing assistance for individuals lacking technical literacy.

*Cognitive Literacy:* After retrieving the relevant information, the user must be able to read it, understand it and apply it to his or her own situation.<sup>215</sup> The ability to understand the meaning behind online legal resources and apply them requires five major dimensions of cognitive literacy: prose literacy; document literacy; numeracy and problem-solving skills, and legal literacy.<sup>216</sup> The OECD defines prose literacy as “the knowledge and skills needed to understand and use information from texts”, while document literacy is described as “the knowledge and skills required to locate and use information contained in various formats, including job applications, payroll forms”. Meanwhile, numeracy is referred to as “the knowledge and skills required to effectively manage the mathematical demands of diverse situations” and problem-

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<sup>212</sup> See Ng, *supra* note 129 at 1068.

<sup>213</sup> See Statistics Canada, “Individual Internet use and E-Commerce” *The Daily* (October 12, 2011), online: [www.statcan.gc.ca/daily-quotidien/111012/dq111012a-eng.htm](http://www.statcan.gc.ca/daily-quotidien/111012/dq111012a-eng.htm).

<sup>214</sup> See GMC & GIFEC, “The Digital Divide in Ghana”, *supra* note 100 at 17.

<sup>215</sup> Hughes, “Access to Justice Through Generic Solution”, *supra* note 98 at 13.

<sup>216</sup> See Canadian Council of Administrative Tribunals, *Literacy and Access to Administrative Justice in Canada: A Guide for the Promotion of Plain Language* (Ottawa: University of Ottawa, 2005), online: 6 – 12, online: [www.ccat-ctac.org/CMFiles/Publication/Literacyandjustice.pdf](http://www.ccat-ctac.org/CMFiles/Publication/Literacyandjustice.pdf).

solving is seen as “the understanding of the problem situation and its step-by-step transformation based on planning and reasoning”.<sup>217</sup> Legal literacy also plays a crucial role in ensuring access to online legal resources. The user must be sufficiently literate to comprehend the language used in a legal context, draw conclusions from this and act upon these conclusions.<sup>218</sup> Aside from the ability to read and understand written text, self-justice seekers (or self-represented litigants) must also be able to understand legislation (including rules of court and practice directives) and basic features of case law, such as citations and the principles of *stare decisis*. They must also have the knowledge to be able to identify appropriate court forms, such as motions and writs. In addition, self-justice seekers (in particular, self-represented litigants) need to possess a level of legal literacy that will enable them to manage legal information; for example, applying methodologies of legal analysis, such as IRAC (issue, rule, analysis and conclusion).

Low cognitive literacy is among the major access to justice issues that self-justice seekers face when navigating the Canadian justice system.<sup>219</sup> A significant number of Canadians have low prose and document literacy, poor numeracy and problem-solving skills, and a low level of legal literacy.<sup>220</sup> The problem stems from the fact that the offline inaccessibility of legal information has been transferred to the digital world. Websites that embed case law, legislation and court documents (i.e. forms and rules of procedure) maintain their complexity via this legal information. One study conducted on court guides sourced from the sites of several Canadian courts found a whole host of problems, ranging from unclear grammatical expressions to numerous unexplained technical terms.<sup>221</sup>

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<sup>217</sup> OECD, Statistics Canada, “Literacy for Life: Further Results from the Adult Literacy and Life Skills Survey” (OECD Publishing, 2011) at 14, online: [www.statcan.gc.ca/pub/89-604-x/89-604-x2011001-eng.pdf](http://www.statcan.gc.ca/pub/89-604-x/89-604-x2011001-eng.pdf).

<sup>218</sup> See Canadian Bar Association Task Force on Legal Literacy, *Reading the Legal World: Literacy and Justice in Canada* (Ottawa: Canadian Bar Association, 1992) at 23. For an in-depth discussion of legal literacy, see Archie Zariski, *Legal Literacy: An Introduction to Legal Studies* (Edmonton, Canada: AU Press, 2014).

<sup>219</sup> See e.g. Macfarlane, *supra* note 43 at 56 – 66; Valerie Mutton, “Poor literacy an obstacle to justice” *Chronicle Herald* (4 March 2012), online: Halifax Herald <http://thechronicleherald.ca/thenovascotian/69897-poor-literacy-obstacle-justice>.

<sup>220</sup> See generally Canadian Council of Administrative Tribunals, *Literacy and Access to Administrative Justice in Canada: A Guide for the Promotion of Plain Language* (Ottawa: University of Ottawa, 2005) at 7 – 9, online: [www.ccat-ctac.org/CMFiles/Publication/Literacyandjustice.pdf](http://www.ccat-ctac.org/CMFiles/Publication/Literacyandjustice.pdf).

<sup>221</sup> Macfarlane, *supra* note 43 at 66.

Low levels of literacy are also prevalent in Ghana. A significant number of Ghanaians have limited prose and document literacy, poor numeracy, and meagre problem-solving skills.<sup>222</sup> The problem of limited legal literacy also came to bear in *Bako-Alhassan v Attorney-General*, where, for the first time in Ghana, a self-represented litigant filed a writ of summons at the Supreme Court, requesting the Court to formally and legally recognize self-represented litigants, and set out simplifying and streamlining procedures to help self-represented litigants prosecute their cases effectively, even if they lacked proficiency in this area.<sup>223</sup> The fact that the applicant was seeking to simplify and streamline procedures indicates that many self-represented litigants face significant legal literacy challenges when attempting to represent themselves in court or use court documents. In this case, for example, the applicant's writ did not comply with the Supreme Court Rules, 1996 (C. I. 16).<sup>224</sup>

The problem of cognitive literacy therefore remains a challenge in both Ghana and Canada and is restrictive to Web-based legal information for access to justice. Online legal information providers can address this challenge by using plain language to facilitate the reading and identification of relevant information.<sup>225</sup> There is the need to also annex glossaries that explain complex terminologies.

*Socio-emotional literacy:* Those seeking online legal resources must also possess adequate socio-emotional literacy to be able to use legal information websites effectively without any repercussions. As Ng explained, the social-emotional dimension of digital literacy involves, among others, the ability of a person to use the Internet responsibly for communicating, and protecting individual safety and privacy by, for example, keeping personal information as private as possible and not disclosing any more personal information than is necessary.<sup>226</sup> I argue that cyber-privacy and security issues have a major impact on the extent to which the Internet can be

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<sup>222</sup> See generally Government of Ghana, Ministry of Education, "Education Sector Performance Report 2016" at 62 - 63, online: [www.moe.gov.gh/site/reports](http://www.moe.gov.gh/site/reports).

<sup>223</sup> *Bako-Alhassan v Attorney General*, (24 April 2013) J1/22/2012 (SC). In addition, the Supreme Court of Canada has for the first time decided on a similar case, with a set of practices for self-represented litigants. Here, the Court endorsed the *Statement of Principles on Self-Represented Litigants and Accused Persons* (2006), established by the Canadian Judicial Council. See *Pintea v Johns*, 2017 SCC 23 (CanLII).

<sup>224</sup> *Ibid.*

<sup>225</sup> See e.g. The Plain Language Action and Information Network (PLAIN), "Federal Plain Language Guidelines" (May 2011) at 89 – 99, online: [www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/FederalPLGuidelines.pdf](http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/FederalPLGuidelines.pdf).

<sup>226</sup> Ng, *supra* note 129 at 1068.

used to promote access to legal information, as Internet users may share sensitive information, when, for example, notarizing documents online with e-signatures or creating legal documents such as court forms and wills.<sup>227</sup> The literature demonstrates that people with specific concerns about the protection of their sensitive information may be disinclined to use Internet-based technologies to address legal issues.<sup>228</sup>

Cyber-security and safety issues potentially limit the Internet's efficiency in facilitating or encouraging access to legal information in Canada, as it is possible that few Canadians understand what happens to the data they are sharing.<sup>229</sup> Many self-justice seekers sharing sensitive information via public or shared computers are highly exposed to cyber-privacy issues such as identity theft.<sup>230</sup> Online safety and security risks may also be a challenge to the use of the Internet for access to legal information in Ghana. Many Ghanaians are largely unaware of the threats and risks of the Internet and may be ignorant of how to protect sensitive information when engaging in online activities.<sup>231</sup> The most frequently cited places for using a computer among Ghanaians are Internet cafes (45.6%), schools (44.5%) and work (42.9%). These points of access potentially expose users to cyber-privacy and security issues. Hence, the use of the public or shared computers to access legal information and resources could leave the users exposed to online safety and security risks, thus limiting their ability to effectively address their legal problems by such means.

From the perspective of digital literacy, individuals with requisite socio-emotional literacy for protecting their sensitive information are likely to exercise great caution when using online legal resources; while those who lack adequate literacy in cyber-privacy and security matters are prone to sharing their sensitive information without adequate discretion. I recommend that measures to protect people seeking online legal resources should be directed towards three major sources of

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<sup>227</sup> See Bonnie Rose Hough, "Issues To Consider In Adopting New Technology" in Cabral *et al*, *supra* note 209 at 265; Bailey, Burkell & Reynolds, *supra* note 3 at 197; Richard Zorza, "Some Reflections on Long-Term Lessons and Implications of the Access to Justice Technology Bill of Rights" (2004) 79 Wash L Rev 389 at 394; Bouclin, McGill & Salyzyn, *supra* note 24 ("Concerns relating to the misuse or selling of data are particularly acute in relation to legal apps given that they may be used to collect sensitive personal information, including financial details").

<sup>228</sup> See Bouclin, McGill & Salyzyn, *supra* note 24.

<sup>229</sup> *Ibid*.

<sup>230</sup> Bonnie Rose Hough, "Issues To Consider In Adopting New Technology" in Cabral *et al*, *supra* note 209 at 265

<sup>231</sup> See "Digital divide - Include digital literacy in school curriculum – Stakeholders" *Pulse* (30 April 2016), online: [www.pulse.com.gh/campus/digital-divide-include-digital-literacy-in-school-curriculum-stakeholders-id4979157.html?ajax=true](http://www.pulse.com.gh/campus/digital-divide-include-digital-literacy-in-school-curriculum-stakeholders-id4979157.html?ajax=true).

cyber-theft: unsecured websites, public or shared computers, and infested digital devices. The literature recommends that individuals be informed of both the existence of cyber-security and privacy problems and ways of mitigating them.<sup>232</sup> Aside from creating cyber-security consciousness, the establishment of a single national portal for online legal information and resources holds great promise for reducing the cyber-theft issues connected with unsecured websites, as a proliferation of sources of legal information creates the enabling environment for perpetrators of cybercrime to create malevolent websites.

### **3.2.4 Usage Access**

The success of Web-based legal information will also depend on the online activity being engaged in, once an individual has gained access. Even when individuals are motivated to use the Internet, have the means of access and possess the literacy to be able to apply the resources obtained, the various online activities engaged in could significantly impact the extent to which Web-based legal information permeates the justice systems of Ghana and Canada to address the informational, physical, material and financial barriers to justice. This aspect of appropriating a technology should be of equal concern to institutions of justice, as online legal resources compete with other online activities - such as banking, shopping, social networking, gaming, and entertainment activities - for the attention of Internet users. Even as increasing numbers of digital literates go online, it is imperative to study the activities they engage in, in order to measure how Web-based legal information can be diffused via the Internet to reach its intended users.

In its *2016 Internet Factbook*, the Canadian Internet Registration Authority reported that email continues to be the number one online service used by Canadians, with most (92%) citing this as a frequent reason for accessing the Internet. Other popular uses include banking (68%), social media (59%) and reading about news or current events (55%). However, almost half of all Canadians are now browsing for goods (49%) and shopping online (49%) and amongst the younger generations in Canada (18-34 years-old), most watch movies, TV and videos online (59%).<sup>233</sup> These data show that legal information providers in Canada have to compete with these

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<sup>232</sup> See e.g. Bonnie Rose Hough, "Issues To Consider In Adopting New Technology" in Cabral *et al*, *supra* note 209 at 265.

<sup>233</sup> Canadian Internet Registration Authority, "CIRA Internet Factbook 2016: Internet Use in Canada", [cira.ca/factbook/domain-industry-data-and-canadian-Internet-trends/internet-use-canada](http://cira.ca/factbook/domain-industry-data-and-canadian-Internet-trends/internet-use-canada).



online activities when endeavouring to promote traffic on their sites and enhance access to online legal resources. The usage access thesis also postulates that while some Canadians will use online legal resources to inform themselves of the entitlements and services available to help them exercise their legal rights, others will use the Internet to visit social media networking sites, download or watch movies and videos, access music, or play online games. Even allowing for the gap in physical and material access, not all Internet users in Canada obtain the same kind of benefits and so the divide between beneficial and non-beneficial users persists in that context.

The divide in online activities also has dire consequences for the provision of Web-based legal information in Ghana. For instance, one 2013 study on the digital divide in Ghana found low usage of government sites (12%). Most users were found to access the Internet for social contact through Facebook (around 85%) and entertainment (60%).<sup>234</sup> Accordingly, legal information providers need to compete with or complement these online activities in order to create traffic on their sites and enhance access to justice. The usage access thesis also assumes that while some Ghanaians will access legal information sites to discover the rights, legal services and legal resources available to them, others will engage with online activities that have very little advantageous effect on legal empowerment, if any, such as using social network sites or entertainment applications. Measures to ensure that online legal resources permeate the Internet to facilitate access to justice must therefore include ways of generating traffic on legal information sites. Without such measures, only a few Ghanaians will ever benefit from online legal resources and this will be at the expense of those exclusively using social networking sites or participating in entertainment activities.

This subsection has concentrated on revealing some of the inequalities in usage access in Ghana and Canada. This situation has an adverse impact on the extent to which the Internet can be harnessed for access to legal information. While one segment of the population visits and uses the information that is available on government websites and from legal information providers, as a means of learning about the legal system and their rights, others purely engage with entertainment applications that hold few or no advantages for increasing capital or resources. The main reason for Internet users selecting specific types of activity is motivation. It consequently

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<sup>234</sup> See GMC & GIFEC, “The Digital Divide in Ghana”, *supra* note 100 at 4, 11. See also “Top Sites in Ghana”, online: [www.alexa.com/topsites/countries/GH](http://www.alexa.com/topsites/countries/GH) (Accessed on June 15, 2017).



follows that legal information providers should implement proactive policies and actions to reduce the level of usage inequality; for example, by providing quality information and marketing their websites.

### **3.3 Conclusion and Recommendations**

Using the Internet to enhance access to legal information involves a constellation of variables for access, which in turn affect the capabilities of the individuals accessing and trying to leverage site content. This section has shown that such variables include information quality; awareness; physical connection; the type of connection and device used for access; technical literacy; cognitive literacy (including legal literacy); the ability to protect oneself from cyber-theft, and the preference of one online activity over another. These variables have the potential to either provide an environment that enables the use of the Internet to access legal information, or to delimit the Internet's efficacy in enhancing access. The resulting assessment shows a potentially negative correlation between the digital divide and the diffusion rate of Web-based legal information, whereby a widening digital gap is in inverse proportion to the technology diffusion rate; whereas contracting the digital divide widens the diffusion of the technological innovation. Hence, institutions of justice in Ghana and Canada should undertake proactive measures to close the digital divide that exists in motivation for access, physical and material access, digital literacy, and usage. Without such measures, the use of the Internet for access to legal information may have little impact; indeed, the institutions of justice risk creating both latent and patent barriers to justice as a result.

The Internet presents numerous opportunities for supplementing access to legal information. Hence, institutions of justice need to consider ways of improving access, rather than withdrawing their efforts in this regard. With proactive measures to reduce the gap formed through digital divides, institutions of justice could harness the information-intensive, document-intensive and interconnected character of the Internet to create, store and share vast amounts of legal information with a broader range of individuals, who can access the information they want from anywhere and at any time. Such initiatives would address the barriers to justice and consequently reinforce the foundations of access to justice: legal health promotion, dispute avoidance, dispute management and adjudication.

The main theme running through the recommendations in this chapter refers to a collaborative and concerted effort on the part of institutions of justice. To paraphrase the words of Cotter, the inequalities in variables of access are so broad and diverse that their solutions require collaborative and concerted effort amongst the institutions of justice, namely the government; judges; law societies; legal aid organizations; universities; legal information providers; law foundations; community agencies, and access to justice advocates, all of which need to invest their time, energy, ideas, expertise and sometimes resources to address such inequalities.<sup>235</sup> These institutions could take their cue from an old Somalian proverb, “the teeth can only bite when they work together”. In some Canadian Provinces, such as Ontario,<sup>236</sup> British Columbia<sup>237</sup> and Saskatchewan,<sup>238</sup> collaborative initiatives have begun to establish a village of organizations, which share their vision, expertise and resources to increase access to justice. Such a collaborative body is a valuable tool for addressing the challenges presented by digital divides. This thesis recommends that these projects design proactive policies and measures to harness the Internet’s potential for providing access to legal information. Such policies and actions could include:

a. The Establishment of a Single National Portal of Legal Information

A single national portal through which the primary sources of law (and other relevant legal documents) can be accessed, as well as other justice-related information, would be valuable for promoting meaningful access to legal information.<sup>239</sup> Such an initiative would address the negative impact of the digital divide on access to legal information. A collaborative effort aimed at establishing a single national portal would bring with it a pool of government bodies; judges; law societies; legal aid organizations; law librarians; legal information providers; law

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<sup>235</sup> Brent Cotter, “Thoughts on a Coordinated and Comprehensive Approach to Access to Justice in Canada” (2012) 63 UNBLJ 54 at 67.

<sup>236</sup> “About Steps to Justice”, online: Community Legal Education Ontario [stepstojustice.ca/about-steps-to-justice](http://stepstojustice.ca/about-steps-to-justice).

<sup>237</sup> Access to Justice British Columbia [acesstojusticebc.ca/committee-members/](http://acesstojusticebc.ca/committee-members/).

<sup>238</sup> Alan Kilpatrick, “The Saskatchewan Access to Legal Information Project (SALI)” *Legal Sourcery* (May 25, 2017), online: [lsslib.wordpress.com/2017/05/25/the-saskatchewan-access-to-legal-information-project-sali/](http://lsslib.wordpress.com/2017/05/25/the-saskatchewan-access-to-legal-information-project-sali/).

<sup>239</sup> The literature recommends a centralized and harmonized electronic portal for legal information, in order to enhance access to legal information. See Action Committee, “Report of the Access to Legal Services Working Group”, *supra* note 11 at 6; Teresa Scassa “The Best Things in Law are Free: Towards Quality Free Public Access to Primary Legal Materials in Canada” (2000) 23 Dal LJ 301; American Association of Law Libraries Special Committee on Access to Justice, *Law Libraries and Access to Justice* (Chicago: USA; American Association of Law Libraries, July 2014) at 13 – 14.

foundations; community agencies, and access to justice advocates, so that their time, energy, ideas, expertise, and resources could be shared. This would then ensure that complete, comprehensive, up-to-date, relevant, accurate and reliable legal information was produced to address the important issues presented by the intended users. A single portal would also reduce the risk of breaches to cyber-security and privacy.

The *Law Central Alberta* website hosts links to virtually all justice-related information sites in Canada.<sup>240</sup> Various other organizations also provide a wide variety of justice-related information for the public.<sup>241</sup> However, I recommend the amalgamation of all such online legal resources from the various Provinces into a single portal for each Province. Canada's Provinces would then be able to share their ideas on constructing comprehensive, relevant and reliable justice-related information, which is also easy to read and understand.<sup>242</sup> These Provincial portals could in turn be embedded in the CanLII website to serve as a general legal information website for Canada.<sup>243</sup> In the same vein, Ghana's institutions of justice could collaborate to establish a national body capable of enhancing access to legal information. This body would also collaborate with GhaLII to establish a website hosting the kind of accurate, current and comprehensive legal information (including primary sources of law and justice-related information) required on a Ghanaian legal information website.

#### b. Creating Awareness

A collaborative body would be able to create awareness through interactive and non-interactive modes of communication - such as community outreach - put into effect by community agencies and organizations that support the least informed, as well as social media platforms. Canada's legal information providers have implemented adequate measures, including the use of social media, posters, novelty items and community media to increase traffic on their sites. The

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<sup>240</sup> See LawCentralAlberta: [www.lawcentralalberta.ca/en/canadian-public-legal-education-ple-organizations](http://www.lawcentralalberta.ca/en/canadian-public-legal-education-ple-organizations).

<sup>241</sup> See Elena Haba, "Selected Inventory of Initiatives to Improve Access to Justice for the Middle Class: A Working Paper for Underexplored Alternatives for the Middle Class" (Ottawa: Canadian Bar Association, 2013) at 9 – 22.

<sup>242</sup> The institutions of justice should engage the public in building the content of their sites. Very often, public legal information providers make assumptions on behalf of the public, but this approach to building website content can lead to piecemeal information, thus failing to address all the important issues involved.

<sup>243</sup> CanLII's website recommends itself as a point of service for accessing the primary sources of law, as it hosts free and open access to Canadian case law and legislation.

institutions of justice in Ghana could take their cue from these.<sup>244</sup> With a sense of belonging, a national portal would also raise awareness and instil motivation to address the divides in motivational and usage access. Additionally, collaborative bodies could go the extra mile to educate the public on how to protect themselves from cyber-theft.<sup>245</sup>

#### c. Increasing Access to Internet-connected Computers

A collaborative body could help build a sustainable funding model to enhance the computer and Internet capacity of libraries, particularly those in rural communities, legal aid organizations, community legal clinics, and neighbourhood justice centres or store-front legal clinics. These organizations would be able to implement measures to protect those who patronise them from cyber-theft. Moreover, they could provide support for users with low technical, cognitive, and socio-emotional literacy in terms of leveraging the Internet.

#### d. Increasing the Accessibility of Online Legal Resources

Organs and agencies of governments, particularly parliament and the judiciary, need to take proactive steps to render law and procedure (including court forms) clear and simple to understand. Legal documents or websites full of legal terminology should therefore also include annexed glossaries. I recommend that CanLII take steps to embed CanLII Primer in its website. Furthermore, website content developers should consider simplifying navigation on sites, as well as improving accessibility and usability for the public to accommodate persons with disabilities.

A single national portal for legal information; greater awareness; increased computer and Internet capacity in organizations that support the less privileged; simplified and streamlined law and legal processes, and improved accessibility and usability on national and provincial sites would, among other things, help address the inequalities in variables of access. Such initiatives would enhance the overall accessibility and usability of the Internet for access to legal information in both Ghana and Canada.

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<sup>244</sup> See Mathews, Rimmington & Vazquez, *supra* note 183 at 29; Colin Lachance, “Social Media and Access to Quality Legal Information” (16 March 2014).

<sup>245</sup> See Government of Canada, “Protect Yourself” (26 April 2017), online: [www.getcybersafe.gc.ca/cnt/prtct-yrslf/index-en.aspx](http://www.getcybersafe.gc.ca/cnt/prtct-yrslf/index-en.aspx).

## CHAPTER FOUR: ONLINE DISPUTE RESOLUTION

### 4.1 The Potential of Online Dispute Resolution

A justice system is merely an illusion unless it is accessible and therefore, timely, affordable and proportionate. However, as noted earlier in this thesis, informational barriers, geographical imbalances in the distribution of institutions of justice, and the high cost of litigation inhibit access to justice in both Ghana and Canada. Consequently, ADR mechanisms have been developed or are being developed to provide alternative means of litigation.<sup>246</sup> Although several ADR practices may be observed, ADR mechanisms outside the court system are still in the process of being shaped and developed. ODR now presents advanced features to facilitate and promote ADR.<sup>247</sup> It represents a creative way of employing modern information-intensive, document-intensive, interactive and inter-connective technology for the prevention, management and resolution of disputes. This technology uses various electronic communication tools, such as the Internet, email, and telephone or video links for addressing legal problems. In addition, it may be used on its own or alongside traditional face-to-face dispute resolution mechanisms, depending on the nature of the case and the circumstances of the parties involved.<sup>248</sup>

Besides the benefits associated with ADR - for example, lower cost, speedy and informal dispute settlement, or the fact that it is less adversarial and presents fewer jurisdictional problems-<sup>249</sup> ODR provides additional benefits for addressing the informational, physical and material, and

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<sup>246</sup> Hon Mr. Justice George W Adams & Naomi L Bussin, "Alternative Dispute Resolution and Canadian Courts: A Time for Change" (1995) 17:2 Adv Q 133; Emmanuel Kwabena Quansah, *The Ghana Legal System* (Accra, Ghana: Black Mask Limited, 2011) at 391 – 399.

<sup>247</sup> For discussions on ODR systems, processes and practices, see Mohamed Wahab, Ethan Katsh & Daniel Rainey, *Online Dispute Resolution: Theory and Practice, A Treatise on Technology and Dispute Resolution* (The Hague: Eleven International Publishing, 2012); Maurits Barendrecht et al, "Trend Report 4 - ODR And the Courts: The Promise of 100% Access To Justice?" (The Hague Institute for Innovation of Law, 2016), online: [www.onlineresolution.com/hiil.pdf](http://www.onlineresolution.com/hiil.pdf); The National Center for Technology and Dispute Resolution [odr.info/](http://odr.info/).

<sup>248</sup> ABA Task Force on Electronic Commerce and Alternative Dispute Resolution, *Addressing Disputes in Electronic Commerce* (Chicago, USA: American Bar Association, 2002) at 1, online: [www.americanbar.org/content/dam/aba/migrated/dispute/documents/FinalReport102802.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/dispute/documents/FinalReport102802.authcheckdam.pdf).

<sup>249</sup> See Hon Mr. Justice George W Adams & Naomi L Bussin, "Alternative Dispute Resolution and Canadian Courts: A Time for Change" (1995) 17:2 Adv Q 133 at 141 – 142.

financial barriers to justice. It also promotes the pathways to justice: legal health promotion, dispute avoidance, dispute management and adjudication. As it is by nature information- and document-intensive, ODR developers, as in web-based legal information providers, can create, store and share vast amounts of information with users.<sup>250</sup> ODR users now have timely access to legal advice on diverse issues and can file their complaints electronically, while also receiving online advice. Moreover, ODR transcends distance to allow its operators and users to communicate and share information for addressing legal disputes. Its users can file their complaints electronically and receive prompt mediation/adjudication, while actual convergence is not a prerequisite. As a result, parties do not need to travel and are not bound by time or dates, as mediation/adjudication can occur at any time. The opportunities for this flexibility reduce the costs and risks associated with travelling to dispute resolution centres. Online advice, coupled with the potential benefits of a decision support system can also reduce costs, due to limited reliance on support from lawyers or mediators.<sup>251</sup> In instances where the system involves a third party (a mediator/facilitator or adjudicator), the participants may pay a fee, but this will be far lower than the charges imposed in today's courts.<sup>252</sup> In addition to these benefits for the parties, ODR has the potential to be advantageous to society, as it helps "increase conflict resolution options, reduce court caseloads, and prompt reforms in [the] existing court system".<sup>253</sup>

The scope of ODR application is extensive, with technology providing advanced opportunities for the four pathways to justice. In countries where ODR has been publicly institutionalized, its application usually covers an entire spectrum of dispute resolution; from problem diagnosis, to the promotion of bilateral communication between parties, arbitration, and court-like or actual

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<sup>250</sup> See Salter & Thompson, *supra* note 3 at 135.

<sup>251</sup> For literature on the benefits of ODR, see e.g. Arno R. Lodder & John Zeleznikow, *Enhancing Dispute Resolution Through the Use of Information Technology* (Cambridge; New York: Cambridge University Press, 2010) at 13 – 14; Faye Fangfei Wang, *Online Dispute Resolution: Technology, Management and Legal Practice From An International Perspective*, (Oxford: Chandos Publishing, 2009) at 28 - 29; Ijeoma Ononogbu, "Online Dispute Resolution in Africa" in Uwazie, *supra* note 3 at 73.

<sup>252</sup> For instance, the average strata dispute at the Supreme Court of British Columbia costs \$20,000 and \$25,000, but the legal fee for a decision adjudicated by the British Columbia Civil Resolution Tribunal costs less than \$300. See Ian Mulgrew "Civil Resolution Tribunal heralds the no-day-in-court future", (December 28, 2016), online: [vancouver.sun.com/opinion/columnists/ian-mulgrew-civil-resolution-tribunal-heralds-the-no-day-in-court-future](http://vancouver.sun.com/opinion/columnists/ian-mulgrew-civil-resolution-tribunal-heralds-the-no-day-in-court-future); "CRT Fees – Strata Disputes", online: British Columbia Civil Resolution Tribunal [www.civilresolutionbc.ca/crt-fees/](http://www.civilresolutionbc.ca/crt-fees/).

<sup>253</sup> Lucilie M. Ponte & Thomas D. Cavenagh, *Cyberjustice: Online Dispute Resolution (ODR) for E-Commerce* (Upper Saddle River, N J: Pearson/Prentice Hall, 2005) at 24, 28 - 31.

court processes.<sup>254</sup> The diagnosis phase/online evaluation hinges on the philosophy that the basic or first step involved in technology-assisted dispute resolution is the provision of information to assist in avoiding disputes as well as resolving them.<sup>255</sup> The problem diagnosis phases therefore enable users to access targeted information about the problems they face, including the identification and explanation of potentially relevant rights and obligations, and the options available to them.<sup>256</sup> Parties who are unable to settle their differences through bilateral communication can then employ a trained and experienced facilitator, working online. This mediator will review papers and statements from the parties and help them by mediating, advising or encouraging them to negotiate.<sup>257</sup> If the arbitration/facilitation phase fails to resolve the problem, the dispute can proceed to online judges, who evaluate the papers submitted to them by electronic means. The decision of the online judges is binding and enforceable, enjoying the same status as decisions made by judges in traditional courtrooms.<sup>258</sup>

ODR is an internationally fast-growing area of dispute resolution and it is increasingly applied to address a broad range of disputes, such as consumer affairs; divorce and marital separation; landlord-tenant disputes; employment disputes; debts; administrative law disputes; appeals against traffic penalties, and regional conflicts.<sup>259</sup> In its 2014/2015 report, the Traffic Penalty Tribunal of England and Wales, for example, reported that it conducted 68% of its hearings through e-decisions, 20% through telephone hearings, and only 12% through face-to-face

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<sup>254</sup> Advisory Committee of the National Centre for Technology and Dispute, “Online Dispute Resolution Standards of Practice” (July 2009) at 1, online: Internet Corporation for Assigned Names and Numbers

[www.icann.org/en/system/files/files/odr-standards-of-practice-en.pdf](http://www.icann.org/en/system/files/files/odr-standards-of-practice-en.pdf); Online Dispute Resolution Advisory Group, *Online Dispute Resolution for Low Value Civil Claims* (England & Wales: Civil Justice Council, 2015) at 19 – 20.

<sup>255</sup> Michael Legg, “The Future of Dispute Resolution: Online ADR and Online Courts” Australasian Dispute Resolution J [Forthcoming in 2016].

<sup>256</sup> See Salter & Thompson, *supra* note 3 at 130; Online Dispute Resolution Advisory Group, *supra* note 254 at 19.

<sup>257</sup> See Salter & Thompson, *supra* note 3 at 132 – 134; Online Dispute Resolution Advisory Group, *supra* note 254 at 19 – 20.

<sup>258</sup> See Salter & Thompson, *supra* note 3 at 133 – 134; Online Dispute Resolution Advisory Group, *supra* note 254 at 20.

<sup>259</sup> For online dispute resolution initiatives, see e.g. Civil Resolution Tribunal, Online Solution Explorer for small claims and condominium disputes (British Columbia Ministry of Justice, Canada, online: [www.civilresolutionbc.ca/](http://www.civilresolutionbc.ca/)); Rechtwijzer 2.0 for divorce and separation, consumer affairs, administrative law issues, rent, and debts (Dutch Legal Aid Board, Netherlands, online: [rechtwijzer.nl/](http://rechtwijzer.nl/)); Traffic Penalty Tribunal (TPT) for appeals on Penalty Charge Notices (PCNs) issued for parking contraventions, bus lane contraventions, moving traffic contraventions, and failing to pay a charge (England and Wales, online: [www.trafficpenaltyTribunal.gov.uk/](http://www.trafficpenaltyTribunal.gov.uk/)). England and Wales is taking steps to employ ODR in the court system. See Lord Just Briggs, Civil Courts Structure Review: Interim Report, Judiciary of England and Wales (December 2015) at 75, online: [www.judiciary.gov.uk/wp-content/uploads/2016/01/ccsr-interim-report-dec-15-final1.pdf](http://www.judiciary.gov.uk/wp-content/uploads/2016/01/ccsr-interim-report-dec-15-final1.pdf).



conference.<sup>260</sup> A remarkable 60 million disagreements amongst traders on eBay are also resolved every year using ODR.<sup>261</sup>

This review shows that ODR systems offer advanced opportunities for addressing the informational, physical and material, and financial barriers to justice, thus empowering the public by informing of their rights and obligations as they endeavour to settle their differences, or employ the services of a third party to assist in the process. However, despite the fact that ODR presents the broadest opportunities for dispute resolution practices, technology itself is equally the biggest challenge to these practices.<sup>262</sup> The digital divide is among the salient issues to consider when attempting to resolve disputes online.<sup>263</sup> The extent of the digital divide will moreover influence the rate at which ODR services can diffuse into the Ghanaian and Canadian justice systems, in order to facilitate ADR practices; hence the need for proactive policies and actions to address inequalities in the variables of access: motivation, physical and material factors, literacy and usage.

This next section attempts to examine the impact of the digital divide on ODR practices in intrastate disputes in Ghana and Canada. Ononogbu recommends ODR practices in developing countries such as Ghana.<sup>264</sup> Ghana has introduced electronic communication tools into its dispute resolution services, but the justice system has yet to adopt ODR practices.<sup>265</sup> In Canada, the most advanced form of ODR practice been generated by the creation of the British Columbia Civil

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<sup>260</sup> Traffic Penalty Tribunal, England and Wales, *Annual Statistics Report 2014/15*, at 7, online: [www.trafficpenaltytribunal.gov.uk/docs/TPT\\_Annual\\_Statistics\\_Report\\_14\\_15.pdf.pdf](http://www.trafficpenaltytribunal.gov.uk/docs/TPT_Annual_Statistics_Report_14_15.pdf.pdf).

<sup>261</sup> Online Dispute Resolution Advisory Group, *supra* note 254 at 11.

<sup>262</sup> Among the issues identified are obtaining the parties' consent; confirming the identity of the parties; due process and procedural fairness; a lack of human interaction; 'the faceless mediator'; the digital divide; disparity between the parties; infrastructural costs; breaks in communication (how do you know if a participant has withdrawn from the mediation?); regulating speech by keeping discussions focused; moderating speech involving fundamental legal or value conflicts, and the enforcement of agreements. See Colm Brannigan, "Online Dispute Resolution" in Allan Stitt, ed, *Alternative Dispute Resolution Practice Manual* (North York, Ontario: CCH Canadian Limited, 1996) at 6913; Joel B Eisen, "Are We Ready for Mediation in Cyberspace?" (1998) *Brigham Young UL Rev* 1305 at 1347 – 1352; Suzanne Van Arsdale, "User Protections in Online Dispute Resolution" (2015) 21 *Harv Negot L Rev* 107 at 123 – 130.

<sup>263</sup> See Hughes, "Using Technology to Advance Access to Justice", *supra* note 94, citing National Alternative Dispute Resolution Advisory Council, *Dispute Resolution and Information Technology Principles for Good Practice (Draft)* (March 2002) at 7, online: Australian Government <https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/dispute-resolution-information-technology-principles-good-practice.pdf>.

<sup>264</sup> Ijeoma Ononogbu, "Online Dispute Resolution in Africa" in Uwazie, *supra* note 3 at 73.

<sup>265</sup> See Kwadwo Sarkodie, "Arbitration in Ghana - the Alternative Dispute Resolution Act 2010" (2011) 28:4 *Intl Construction L Rev* 466; Ijeoma Ononogbu, "Online Dispute Resolution in Africa" in Uwazie, *supra* note 3 at 73.



Resolution Tribunal (CRT). This is the first publicly administered online tribunal to deploy the full range of ODR practices: problem diagnosis, information, self-help, negotiation, facilitation and adjudication.<sup>266</sup> For this reason, I concentrate on the CRT, analysing how its services respond to the inequalities arising from the digital divide. Although CRT is still only in its embryonic stage, it has taken bold steps to promote ODR services and its experiences can provide useful lessons for Ghana in its quest to introduce technology into ADR.

## 4.2 Online Dispute Resolution (ODR) and the Digital Divide

### 4.2.1 Motivational Access

The extent to which the institutions of justice in Ghana and Canada can employ ODR as an alternative to litigation will depend on the public's actual or potential motivation to use technology in this way. Consequently, ODR providers need to actively market their sites; their platforms should be as welcoming and encouraging as possible to motivate their intended users to visit them.<sup>267</sup> The quality of the information content and awareness of its existence and benefits (influencing *perceived usefulness*),<sup>268</sup> combined with the level of complexity of the navigation and information (thus also influencing *perceived usefulness*) are among the most salient predictors of motivation to access ODR platforms. Information quality will impact the rate at which a site with ODR services is visited and will help determine whether the innovation is perceived as advantageous.<sup>269</sup> As Roger postulates, “[t]he greater the perceived relative advantage of an innovation, the more rapid its rate of adoption will be”.<sup>270</sup> This thesis argues that information quality is a contributing factor to the perceived relative advantage of ODR services.

The quality of the content of legal information available in the CRT's online services depends on whether it provides complete, comprehensive, up-to-date, current, accurate and reliable

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<sup>266</sup> For an overview of the Tribunal's legal and institutional framework, see Salter & Thompson, *supra* note 3; Government of British Columbia, “Using the Civil Resolution Tribunal”, online:

[www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/resolving-disputes/the-civil-resolution-tribunal](http://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/resolving-disputes/the-civil-resolution-tribunal).

<sup>267</sup> Roger Smith, “Classical Lessons from the Rechtswijzer: a conversation with Professor Barendrecht” *Law, Technology and Access to Justice* (22 June, 2017), online: [law-tech-a2j.org/odr/classical-lessons-from-the-rechtswijzer-a-conversation-with-professor-barendrecht/](http://law-tech-a2j.org/odr/classical-lessons-from-the-rechtswijzer-a-conversation-with-professor-barendrecht/).

<sup>268</sup> Financial incentives regarding the reduced legal fees for accessing online legal advice in online resolution, together with reduced complexity and delays in accessing justice, have also influenced the *perceived usefulness* of ODR services.

<sup>269</sup> Rogers, *Diffusion of Innovations*, *supra* note 111 at 15.

<sup>270</sup> *Ibid.*

information to address the most important issues of its intended users, i.e. users with strata claims and small claims.<sup>271</sup> The CRT has taken adequate steps to build a comprehensive database of legal information content for the public through consultation with numerous lawyers and experts on the corresponding subject matter. These professionals have volunteered their time and expert knowledge to help create accurate and helpful strata claims and small claims content for the public in these disputed areas.<sup>272</sup> However, despite the fact that this initiative will ensure that the information provided by the CRT is comprehensive, the consultative body for the content of the CRT's legal information database may limit the completeness of the information necessary to address the most important issues facing individuals with small claims and strata claims.

This argument is grounded in the fact that lawyers and strata experts may not be aware of the salient problems faced by the public, particularly the more marginalized members of the society, because over 20% of Canadians take no meaningful action with respect to their legal problems and over 65% think that nothing can be done, are uncertain of their rights, or else do not know how to proceed.<sup>273</sup> Furthermore, in British Columbia, 69% of litigants making small claims are self-represented litigants.<sup>274</sup> It is reasonable to conclude that there are some salient but silent strata claims and small claims that lawyers and strata experts may be unaware of, but which continue to present a legal problem to the public. More so, it must be acknowledged that the contribution of the CRT to addressing housing disputes is limited as British Columbians who have low-to-moderate income (70%) are less likely to rent or buy strata properties such as condos, townhouses, and duplexes due to the cost involved.<sup>275</sup> Hence, many British Columbians are less likely to benefit from the present legal information database on strata claims. For this reason, it would be highly appropriate for providers of publicly managed ODR services to

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<sup>271</sup> The Civil Resolution Tribunal has jurisdiction in strata disputes and small claims with a value below \$5,000.00. See *Civil Resolution Tribunal Act*, 2012, SBC 2012, C-25, s 3.

<sup>272</sup> See Shannon Salter, "The Civil Resolution Tribunal's Next Steps" *Bar Talk* (February 01, 2017), online: [www.cbabc.org/BarTalk/Columns/Guest-Column/The-Civil-Resolution-Tribunal%E2%80%99s-Next-Steps](http://www.cbabc.org/BarTalk/Columns/Guest-Column/The-Civil-Resolution-Tribunal%E2%80%99s-Next-Steps); Salter & Thompson, *supra* note 3 at 130.

<sup>273</sup> See Action Committee, *A Roadmap for Change*, *supra* note 19 at 4.

<sup>274</sup> See British Columbia, Provincial Court, "Annual Report 2015 – 2016" at 50, online: [www.provincialcourt.bc.ca/downloads/pdf/AnnualReport2015-2016.pdf](http://www.provincialcourt.bc.ca/downloads/pdf/AnnualReport2015-2016.pdf).

<sup>275</sup> Reis Financial Solutions Inc, for example, recommends that renting and buying a condo appears better suited for an individual who earns around \$74,000 per annum (See Reis Financial Solutions Inc, "Renting vs. Buying in Vancouver Analysis" *CBC Canada, British Columbia* (2012), online: [www.cbc.ca/bc/news/bc-120315-vancouver-renting-buying-analysis.pdf](http://www.cbc.ca/bc/news/bc-120315-vancouver-renting-buying-analysis.pdf)). Yet, about 70% of British Columbians earn below \$75,000 (See Statistics Canada, "Individuals by Total Income Level, by Province and Territory (British Columbia)" (July 12, 2017), online: [www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil105k-eng.htm](http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil105k-eng.htm)).

involve the intended users (i.e. the public) more fully in the preparation of their database. If publicly institutionalized ODR systems are designed to “focus on meeting citizen needs”, then it is imperative that the developers involve the public at all stages of the development process, in order to identify salient legal problems.

In light of the above, individuals whose legal needs are addressed through ODR systems may wish to patronize such databases, due to their *perceived usefulness*, while individuals with legal problems that are not covered by these databases may not wish to access them, due to a lack of *perceived usefulness*. Ultimately, those who develop a positive attitude of motivation to access the CRT’s online services may visit the site to explore the opportunities available to them, while individuals with problems besetting their motivation to access may not wish to visit the site, due to its lack of *perceived usefulness*.

*Awareness:* The awareness of ODR services and their applicability to legal problems amongst claimants lodging disputes is instrumental to promoting their *perceived usefulness*, which will in turn lead to the innovation being adopted.<sup>276</sup> As a result, it is important to raise awareness or market ODR services, in order to ensure uptake by the intended users.<sup>277</sup> In fact, ODR service providers risk excluding many intended users from their services, if they do not take steps to market themselves.

In this regard, the CRT has taken adequate steps to create awareness. The number of people (4,000) visiting its site as at February 2017 since its inception in July 2016 (i.e. within six months of its inception) is evidence of its popularity.<sup>278</sup> Notwithstanding this, it may be reasonably concluded that not all British Columbians are aware of the CRT’s online services. Comparing the number of British Columbians (over 1.5 million) living in strata housing, including condos, townhouses, duplexes, and even single-family homes in bare land strata corporations,<sup>279</sup> and the number of British Columbians (4,000) who have visited the CRT site to patronize its services, it becomes clear that a great number of British Columbians (over 1,

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<sup>276</sup> See Suzanne Van Arsdale, “User Protections in Online Dispute Resolution” (2015) 21 Harv Negot L Rev 107 at 123 – 130.

<sup>277</sup> Roger Smith, “Classical Lessons from the Rechtwijzer: a conversation with Professor Barendrecht” *Law, Technology and Access to Justice* (22 June 2017).

<sup>278</sup> See Shannon Salter, “The Civil Resolution Tribunal’s Next Steps” *Bar Talk* (February 01, 2017), online: [www.cbabc.org/BarTalk/Columns/Guest-Column/The-Civil-Resolution-Tribunal%E2%80%99s-Next-Steps](http://www.cbabc.org/BarTalk/Columns/Guest-Column/The-Civil-Resolution-Tribunal%E2%80%99s-Next-Steps).

<sup>279</sup> Government of British Columbia, “Strata Housing”, online: [www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing](http://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing).

496,000) have yet to visit the CRT site to explore the opportunities available to them, to overcome the informational, financial, physical and material barriers to resolving their strata or small claims problems. Without adequate mechanisms to increase awareness of the site, the digital divide between those who are aware of it and those who are unaware will have an adverse effect on CRT's contribution to access to justice in British Columbia. The CRT is applying adequate measures to create awareness through social media and is conducting presentations for strata owners, strata corporations, strata councils and strata developers, as well as those representing third parties, such as tenants, property managers and universities.<sup>280</sup> The Government of British Columbia is also marketing the CRT through its website.<sup>281</sup> This current thesis recommends the inclusion of community organizations, and public legal education and information organizations, such as the Justice Education Society, to raise awareness amongst British Columbians of the CRT's existence, capabilities and jurisdiction in strata and small claims. The involvement of such organisations in the CRT's services may in fact help the tribunal to achieve its mandate by reaching out to people who lack awareness of the existence and capabilities of the CRT. Without significant awareness, the few people who are aware of the CRT's existence and its applicability to their legal problems will access its online services to address their informational, financial, physical and material barriers to justice, while those lacking such knowledge will continue to battle with barriers to justice, or else simply abandon the idea of recourse to justice altogether.

*Complexity of Navigation and Information:* Aside from developing a positive attitude of *perceived usefulness* towards ODR services, the intended beneficiaries must also develop a positive attitude of *perceived ease of use* towards such sites. As a result, the sites of ODR providers should be as welcoming and encouraging as possible, thus instilling a positive attitude of *perceived ease of use* in the intended users.<sup>282</sup> The way the CRT structures and operates its site and processes will have a significant influence on the extent to which its intended users perceive it as 'easy to use'. Simplifying navigation and information on a site is critical to encouraging a positive attitude of *perceived ease of use* in the intended users. The CRT has implemented

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<sup>280</sup> See e.g. The Continuing Legal Education of British Columbia [www.cle.bc.ca/OnlineStore/productdetails.aspx?cid=1401](http://www.cle.bc.ca/OnlineStore/productdetails.aspx?cid=1401).

<sup>281</sup> Government of British Columbia [www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/resolving-disputes/the-civil-resolution-tribunal](http://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/resolving-disputes/the-civil-resolution-tribunal).

<sup>282</sup> Roger Smith, "Classical Lessons from the Rechtwijzer: a conversation with Professor Barendrecht" *Law, Technology and Access to Justice* (22 June 2017).

proactive measures to simplify its site, in order to facilitate navigation and access to information. For example, it integrates an intelligent questionnaire in its interactive style, containing questions and answers in plain language, so that its users are provided with tailored legal information on their rights, obligations and the options available to assist them in resolving disputes (including the CRT's dispute resolution). This is accompanied by self-help tools to assist them in addressing their legal problems.<sup>283</sup> The literature argues that an interface containing interactive questions and answers is one of the mechanisms for promoting access to information for non-experts.<sup>284</sup> Its information and self-help tools are also customized for users' problems, instead of a deluge of information. Furthermore, the information and resources it provides are written in plain language for ease of reading and understanding. Arguably, these mechanisms enhance the accessibility and usability of a site.

#### 4.2.2 Physical and Material Access

After the intended users of ODR services have developed a positive attitude of *perceived usefulness* and *perceived ease of use* concerning the use of a system, they must then have the means of accessing it. For this to take place, they need to be physically connected to the Internet and use an appropriate digital device and connection to access the ODR services. According to the 2016 Communication Monitoring Report by the Canadian Radio-television and Telecommunications Commission, 95% of households in British Columbia have access to broadband services of at least 5Mbps download speed.<sup>285</sup> Most British Columbians also tend to access the Internet via computers (66%).<sup>286</sup> People who do not own personal computers may access a free Internet connection at the 62 Community Access Terminals.<sup>287</sup> The CRT also coordinates with local libraries to provide computer and Internet access for individuals without

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<sup>283</sup> See Salter & Thompson, *supra* note 3 at 129.

<sup>284</sup> For a detailed discussion on the use of a questionnaire-based user interface to enhance navigation, see Darin Thompson, "Creating New Pathways to Justice Using Simple Artificial Intelligence and Online Dispute Resolution" (2015) 2:1 Intl J Online Dispute Resolution 4 at 44 – 51.

<sup>285</sup> See Canadian Radio-television and Telecommunications Commission, *Communications Monitoring Report (2016)* (Ontario: Canadian Radio-television and Telecommunications Commission, 2016) at 62.

<sup>286</sup> Canadian Internet Registration Authority, "CIRA Internet Factbook 2016", online: [cira.ca/factbook/domain-industry-data-and-canadian-Internet-trends/internet-use-canada](http://cira.ca/factbook/domain-industry-data-and-canadian-Internet-trends/internet-use-canada).

<sup>287</sup> Service BC [www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/ministries/technology-innovation-and-citizens-services/servicebc](http://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/ministries/technology-innovation-and-citizens-services/servicebc).

Internet-connected computers.<sup>288</sup> These provisions indicate that a great number of British Columbians have access to computers that can support CRT's ODR services. However, those who access online services via mobile phones (21%) may encounter significant challenges, since mobile phones offer less support for text input, a small screen size, menus that are difficult to navigate and have challenging input functions. Hence, although most British Columbians have access to computers enabling them to connect to the Internet, those accessing the CRT's online services on mobile phones may be unable to perform online activities with ease, or pick up and drop off CRT Forms at Service BC locations.<sup>289</sup> As a result, the device divide (i.e. the differences in the devices for accessing the Internet – PC-based only, mobile-based only, and both PC- and mobile-based Internet) may limit the extent to which the CRT's online services facilitate access to justice for persons connected to online services via mobile phones.

In Ghana, the institutions of justice face significant challenges to the use of ODR services as an alternate means of litigation, given that there are very wide physical and material access divides in the country. As at 2013, only 14% of Ghanaians were recorded as being able to access the Internet.<sup>290</sup> However, even within this population segment, there are disparities in the material resources for access. For instance, the majority of Internet users in Ghana connect to the Internet using their mobile phones (60%), with low laptop (20%), and computer usage (15%).<sup>291</sup> In addition, the National Communication Authority recorded higher mobile data (15.3 million gigabytes) than broadband usage (2.65 million gigabytes) during the second quarter of 2016.<sup>292</sup> These data show that Ghana currently lacks the enabling technological environment to accommodate ODR services as a means of enhancing dispute resolution, because most of the population are not connected to the Internet and when they are, the majority connect using mobile phones. Unfortunately, mobile phones do not lend themselves well to accessing the volume or nature of text required when obtaining legal materials, given their small screens, compatibility with certain file formats and complex data input menus. There is also the issue of

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<sup>288</sup> British Columbia Civil Resolution Tribunal, "Special Accommodation", online: [civilresolutionbc.ca/how-the-crt-works/tribunal-process/starting-a-dispute/special-accommodation/#what-if-i-am-unable-or-unwilling-to-use-a-computer](http://civilresolutionbc.ca/how-the-crt-works/tribunal-process/starting-a-dispute/special-accommodation/#what-if-i-am-unable-or-unwilling-to-use-a-computer).

<sup>289</sup> See Shannon Salter, "How the CRT is Improving Access to Justice" (April 18, 2017), online: [civilresolutionbc.ca/crt-improving-access-justice/](http://civilresolutionbc.ca/crt-improving-access-justice/).

<sup>290</sup> GMC & GIFEC, "The Digital Divide in Ghana", *supra* note 100 at 4.

<sup>291</sup> *Ibid.*

<sup>292</sup> See National Communications Authority, Ghana, "2016 Quarterly Statistical Bulletin on Communications in Ghana: Second Quarter" at 3.

low uptake of broadband services, which affects the use of ODR services for sharing information, downloading documents and video links. Sustained growth in the uptake of broadband data and computer usage is therefore desirable for ODR services in Ghana. Without such an enabling environment, ODR practices may yield minimal impact in that context. In a nutshell, therefore, the small segment of the population who seek ODR services and are connected to the Internet through computers and broadband will harness the potential of the system to overcome informational, physical, material and financial barriers to justice, while those who may wish to access ODR services, but are connected to the Internet through mobile phones and using a connection other than broadband, will be less privileged to utilize the system.

#### **4.2.3 Digital Literacy**

The digital literacy of users of ODR services is fundamental to their ability to leverage the system after access. Digital literacy is a multidimensional phenomenon that measures the full competencies of technology users, in order to be able to leverage it. As noted above, Ng conceptualizes this phenomenon as encompassing technical literacy, cognitive literacy and socio-emotional literacy.

*Technical literacy:* Technical literacy defines a user's capabilities to carry out basic computer-based operations and access resources for everyday use, including effectively searching for and identifying information as part of research and content learning.<sup>293</sup> Hence, the required technical skills include competencies such as being able to boot up and shut down a computer; open links and folders; save files; use peripheral equipment, such as printers, and carry out research on the Web to locate the relevant information. Given its interactive question and answer interface, users of the CRT website may not face significant challenges accessing its database. The CRT also guides its users through its processes. Its website structure and interface make it easy for a user to locate a portal.<sup>294</sup> However, there may be a category of technical 'know-nots' who experience difficulties in accessing the CRT's information and using computers or mobile phones to open folders and save files, or peripheral equipment, such as printers to print self-help tools like letters from tribunals, among other things. In fact, a significant number of British Columbians find the

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<sup>293</sup> Ng, *supra* note 129 at 1068.

<sup>294</sup> British Columbia Civil Resolution Tribunal [civilresolutionbc.ca/](http://civilresolutionbc.ca/).



Internet or computers too difficult to use in such ways.<sup>295</sup> The CRT has, however, taken adequate steps to assist this section of the population to access its online services. The CRT's front-line resolution support clerks (RSCs) provide telephone and email support to those encountering difficulties in using its online application procedures or in completing documents. The CRT has also held workshops with librarians to provide them with information about helping those who visit libraries to use computers for CRT services.<sup>296</sup>

Technical literacy may be a challenge to the use of ODR services in Ghana. The most significant reason (over 50%) given for not using the Internet is a lack of skill in using it. Hence, it is likely that many Ghanaians will face significant challenges when attempting to operate computers and mobile phones, as well as when searching for information through ODR portals. To address this concern, institutions of justice should structure and operate ODR services to simplify use of the site. An interactive question and answer interface could thus be a starting point. Moreover, those who are unable to use the Internet should be given the necessary assistance to access ODR services. Most importantly, there is a need to maintain traditional access services; for example, paper-based services to supplement and support online services.

*Cognitive literacy:* Cognitive literacy encompasses prose literacy, document literacy, numeracy, problem-solving and legal literacy. British Columbians who access legal information on the CRT site (including self-help tools, such as mediation guides and letters) must be able to read understand and apply them to their circumstances.<sup>297</sup> Legal literacy is particularly important at the adjudication stage of the CRT's dispute resolution services, since the parties must have the legal literacy to, for example, articulate their legal claims and formulate arguments about how the facts support these claims, chiefly through written communication.<sup>298</sup> It is crucial to address issues concerning legal literacy, as the parties are required to represent themselves in CRT

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<sup>295</sup> See Statistics Canada, "Individual Internet use and E-Commerce" *The Daily* (October 12, 2011), online: [www.statcan.gc.ca/daily-quotidien/111012/dq111012a-eng.htm](http://www.statcan.gc.ca/daily-quotidien/111012/dq111012a-eng.htm).

<sup>296</sup> See British Columbia Civil Resolution Tribunal, "Special Accommodation", online: [civilresolutionbc.ca/how-the-crt-works/tribunal-process/starting-a-dispute/special-accommodation/#what-if-i-am-unable-or-unwilling-to-use-a-computer](http://civilresolutionbc.ca/how-the-crt-works/tribunal-process/starting-a-dispute/special-accommodation/#what-if-i-am-unable-or-unwilling-to-use-a-computer).

<sup>297</sup> See Hughes, "Access to Justice Through Generic Solution", *supra* note 98 at 13.

<sup>298</sup> See Salter & Thompson, *supra* note 3.



proceedings, except in limited proceedings.<sup>299</sup> The Legislative Assembly of British Columbia has already raised the issue of legal literacy during the developing stage of the CRT, noting that:

Oftentimes it is really difficult for people to express themselves in the way that is going to best advance their case. If there is the need to be putting forward a lot of written submissions on the Internet, or however it's going to be done, that can be a bit daunting for people.... self-representation doesn't always work well. People are not necessarily articulate. They don't know how to best put their arguments forward.<sup>300</sup>

However, it may also be observed that the CRT has taken adequate steps to mitigate these challenges, using text in plain language, so that its users can better comprehend the information provided. Moreover, it has reduced the amount of written communication required through the use of teleconferencing or videoconferencing for parties who have trouble reading or writing.<sup>301</sup> Additionally, unlike the court system, filing a case with the CRT is flexible and less adversarial. As Salter and Thompson explain:

[U]sers are not asked to frame the dispute in highly adversarial terms, or to outline the arguments they would make if the dispute were to be resolved by adjudication. Rather, they are asked to provide enough information about the dispute and their positions on it, along with supporting evidence.<sup>302</sup>

The CRT provides an interactive question and answer interface to guide the initiating party in filing their case. As a tribunal, the sitting tribunal members may also assist parties in seeking out relevant evidence. As Lopez held in *Wong v Section 1 of The Owners, Strata Plan N.W. 2320 et al*,

The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.<sup>303</sup>

Aside from these provisions, users with literacy problems are also privy to the services of public legal education and organizations in British Columbia, such as Clicklaw, the Justice

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<sup>299</sup> See *Civil Resolution Tribunal Act*, 2012, SBC 2012, C-25, s 20.

<sup>300</sup> British Columbia, Legislative Assembly, *Official Report of Debates (Hansard)*, 39th Leg, 4th Sess, Vol 27/No 4 (8 May 2012) at 11693 (Claire Trevena). See also Karim Benyekhlef & Nicolas Vermeys, “ODR and the Digital Divide Scarecrow” *Slaw* (October 6, 2015), online: [www.slaw.ca/2015/08/06/odr-and-the-digital-divide-scarecrow/](http://www.slaw.ca/2015/08/06/odr-and-the-digital-divide-scarecrow/).

<sup>301</sup> British Columbia Civil Resolution Tribunal, “Special Accommodation”, online: [civilresolutionbc.ca/how-the-crt-works/tribunal-process/starting-a-dispute/special-accommodation/#what-if-i-have-difficulty-reading-and-writing](http://civilresolutionbc.ca/how-the-crt-works/tribunal-process/starting-a-dispute/special-accommodation/#what-if-i-have-difficulty-reading-and-writing).

<sup>302</sup> See Salter & Thompson, *supra* note 3 at 131.

<sup>303</sup> *Wong v Section 1 of The Owners, Strata Plan N.W. 2320 et al*, 2017 BCCRT 25 at para 4 (CanLII).

Education Society and the People's Law School. Hence, although cognitive literacy is a challenge to ODR services, there are sufficient provisions in British Columbia to assist persons with limited cognitive literacy.

Limited cognitive literacy may be a challenge to the effective implementation of ODR services in Ghana, as cognitive literacy for reading and understanding legal information is limited amongst many Ghanaians, as is their ability to prepare the necessary legal documentation to make claims. Hence, the institutions of justice must constitute proactive policies and actions to accommodate individuals with limited cognitive literacy. The use of plain language; oral communication to complement or even substitute written communication; the incorporation of non-adversarial features of tribunals into ODR services, and collaboration with public legal education and information organizations to provide assistance for persons with limited literacy, would potentially address the challenges created by uneven digital literacy.

*Socio-emotional literacy*:<sup>304</sup> The ability of ODR users to observe communication netiquette through the application of similar rules as in face-to-face communication such as respect and using appropriate language and words is essential for measuring the extent to which ODR services can facilitate dispute resolution.<sup>305</sup> This aspect of socio-emotional literacy is particularly important when measuring divides in the negotiation and facilitation phases of ODR services, which build on the rapport formed between the parties during their bilateral communication to resolve a dispute. As Braeutigam states: “[s]ome people are more comfortable communicating in person while others are stronger online.”<sup>306</sup> The differences in a party's ability to observe communication netiquette will have a significant impact on the extent to which they can utilize the negotiation and facilitation aspects of ODR services to save time and money, and thereby agree on favourable terms. Those who possess excellent online communication skills are likely to harness the benefits of ODR services at the expense of those with more limited online communication skills. It is therefore important for ODR

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<sup>304</sup> The discussion on cyber-security and privacy in Web-based legal information applies to ODR services, as in most cases, the users share sensitive information, including their financial details.

<sup>305</sup> See Ng, *supra* note 129 at 1068.

<sup>306</sup> Andrea M. Braeutigam, “What I Hear You Writing Is...Issues in ODR: Building Trust and Rapport in the Text Based Environment” (2006) 38 U TOL L Rev 101. For a recent review of the literature on netiquette, see Robert J. Condlin, “Online Dispute Resolution: Stinky, Repugnant, or Drab” (2016) U of Maryland Legal Studies Research Paper No. 2016-40.

operators to design proactive measures to address the inequalities in communication netiquette.

In this regard, the CRT appears to have taken adequate steps to even out the differences in socio-emotional literacy amongst its intended users. For example, its Solution Explorer generates a letter template written in a straightforward and personable manner, in order to open communications between the parties involved. Solution Explorer also gives tips on effective negotiation.<sup>307</sup> Meanwhile, the parties are free to communicate via electronic or paper-based means, or else by telephone, according to their preferences.<sup>308</sup> Such provision enables parties to choose the medium of communication that is best suited to their comfort level and individual strengths. The CRT also monitors communications for abuse or harassment and takes steps to address such issues.<sup>309</sup> Its facilitation and adjudication services are then employed to resolve disputes, if they are not resolved during the party-to-party negotiation phase. These provisions offer adequate mechanisms to address issues concerning socio-emotional literacy in terms of online netiquette.

Socio-emotional literacy may restrict the extent to which Ghanaians can employ ODR services for bilateral communication to resolve a dispute. Many Ghanaians lack communication netiquette such as respect and using appropriate language and words when online.<sup>310</sup> Hence, the use of ODR for ADR practices such as negotiation, which builds on the rapport between the parties, could prove to have minimal impact. Using the CRT model as a guide, institutions of justice could therefore provide assistive tools, such as letter templates and negotiation tips for its intended users; thus, allowing parties to choose their preferred means of communication, while also monitoring their negotiation and providing additional avenues for addressing unresolved disputes. These mechanisms are valuable for mitigating negative aspects of the netiquette divide in Ghana.

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<sup>307</sup> See Salter & Thompson, *supra* note 3 at 131.

<sup>308</sup> *Ibid* at 132.

<sup>309</sup> *Ibid*.

<sup>310</sup> See Kwesi Atta Sakyi, "Ghanaweb Hobos, Addicts, and Commentators-Do They Observe Netiquette?" *Ghanaweb* (14 May 2012), online: [www.ghanaweb.com/GhanaHomePage/features/Ghanaweb-Hobos-Addicts-and-Commentators-Do-they-Observe-Netiquette-238920](http://www.ghanaweb.com/GhanaHomePage/features/Ghanaweb-Hobos-Addicts-and-Commentators-Do-they-Observe-Netiquette-238920).

#### 4.2.4 Usage Access

The usage access thesis becomes relevant when measuring the divides in online activities that compete for Internet users. As the majority of the CRT's services are Web-based, it competes with online activities, such as banking; accessing the news; social networking, for example, on the Facebook and Twitter sites; online gaming, and using entertainment sites like YouTube and Netflix. Although around 95% of British Columbians use broadband connections to go online, they do not all use the Internet to access the CRT's services. This phenomenon indicates that physical and material access to the Internet is not a sole determinant of whether all British Columbians will also access the CRT website. In its *2016 Internet Factbook*, the Canadian Internet Registration Authority reported that email continues to be the number one online service used by Canadians, with most (92%) citing this as a frequent reason for accessing the Internet. Other popular uses include banking (68%), social media (59%) and reading about news or current events (55%). However, almost half of all Canadians are now browsing for goods (49%) and shopping online (49%) and amongst the younger generations in Canada (18-34 years-old), most watch movies, TV and videos online (59%).<sup>311</sup> These data indicate that the CRT's online services are obliged to compete with the above-mentioned online activities for the attention of Internet users. As a result, while some Internet users in British Columbia may wish to access the CRT's online services, the majority may be interested in other online activities, such as those mentioned earlier, namely banking; social media; online shopping, or watching movies, TV and videos online. The normative argument of usage access becomes apparent in the differences between capital-enhancing activities (i.e. banking and reading about the news), and activities with little or no advantage to personal development (i.e. the use of social media, and watching movies, TV or videos online). Hence, even when the CRT does manage to draw the attention of Internet users, some British Columbians would still continue to use the Internet for activities with little or no advantage to their capital development. It is therefore crucial that the CRT raises awareness of its existence and capabilities, and enhances the public's motivation for its use. As has already been discussed, motivation to use is a major reason underpinning the preference for a particular online activity; hence, the need for the CRT to increase its accessibility.

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<sup>311</sup> Canadian Internet Registration Authority, "CIRA Internet Factbook 2016: Internet Use in Canada", [cira.ca/factbook/domain-industry-data-and-canadian-Internet-trends/internet-use-canada](http://cira.ca/factbook/domain-industry-data-and-canadian-Internet-trends/internet-use-canada).

The implementation of ODR services in Ghana may encounter similar challenges to those observed in Canada, due to the differences in appeal across online activities. Social networking on Facebook continues to be the most popular online activity for Ghanaians, with the majority (91%) citing this as a frequent reason for accessing the Internet. Other popular online activities include accessing the news (91%), undertaking education (60%), and accessing entertainment (60%).<sup>312</sup> Hence, the extent to which ODR services can permeate the Ghanaian justice system to promote access to justice will depend on whether it can draw the attention of Internet users. Moreover, applying the normative judgment of the usage thesis, even when ODR services diffuse into the Internet, there are some Ghanaians who will still use the Internet for activities with little or no impact on their capital development. This thesis therefore recommends rigorous measures to create awareness of the existence and capabilities of ODR services when implemented in the justice system.

### **4.3 Conclusion and Recommendations**

Using British Columbia's CRT as a case-study, this chapter has examined the extent to which ODR can promote access to justice in Ghana and Canada. The technology present significant opportunities for promoting access to justice as it is an innovation that can be employed to address the barriers to justice, thus enhancing the basic pillars of access to justice: legal health promotion, dispute avoidance, dispute management and adjudication. However, the rate at which ODR can diffuse into the Ghanaian and Canadian justice systems, in order to contribute to access to justice will depend on how well it negotiates the digital divide. The examination conducted in the present thesis reveals a potential negative correlation between the digital divide and ODR, whereby the digital divide may be widened, thus slowing down the diffusion rate of ODR. In contrast, the digital divide could be reduced to facilitate and accelerate the ODR diffusion rate; hence the need for proactive measures and policies to reduce this gap. This thesis consequently recommends such proactive measures to mitigate inequalities in the variables of access: motivation, physical and material factors, literacy and usage. These would mainly include:

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<sup>312</sup> See GMC & GIFEC, "The Digital Divide in Ghana", *supra* note 100 at 11.

#### a. Promoting Motivational Access

High quality information content would potentially create traffic on ODR platforms. Moreover, the inclusion of lawyers and experts in disputes administered via ODR services could be a laudable initiative. Furthermore, consulting the public when building the information content of ODR sites is recommended, given that many legal problems go unaddressed in the formal justice system. In addition, the marketing of ODR platforms could promote *perceived usefulness*, in that without such measures, individuals who are unaware of such services tend to dismiss the Internet as ‘useless’. This notion of the Internet consequently has an adverse impact on the rate at which ODR platforms are visited. Finally, ODR platforms should be designed to be as attractive as possible, providing the CRT’s assistive tools, such as an interactive questionnaire to ease navigation and the use of plain language.

#### b. Bridging the Physical and Material Access Gap

My review of the existing literature reveals that physical and material access are not necessarily a major problem to the CRT, as most British Columbians are connected to the Internet. However, device divides may represent a more significant challenge, as connection to these services via mobile phones can restrict the ease with which online tasks are completed. Conversely, the physical and material access gap may be a major problem in Ghana, as most Ghanaians do not use the Internet, and even those who do, access it via their mobile phones using a low-speed connection. I recommend the need for mechanisms to reduce the physical and material access divide in Ghana, whereby Ghana’s institutions of justice could collaborate to build a sustainable funding model to increase the Internet and general computer capacity of legal aid organizations, public libraries and community organizations providing support for the less privileged.

#### c. Promoting Literacy Access

Mechanisms are required to increase digital literacy and provide assistance for those with limited literacy. Ghana can learn from the mechanisms introduced by the CRT to address digital illiteracy. For example, the CRT’s front-line staff provide such support for individuals who have difficulty in using the Internet. Moreover, the CRT collaborates with public libraries to assist those using them to access the CRT’s online services. The use of plain language is a further

factor considered as a means of enabling users to comprehend the information provided by the CRT. The provision of negotiation tips then supports users with limited online communication skills. In addition, public legal education and information organizations and community legal clinics can be of benefit for individuals with poor technical and cognitive literacy. Finally, security measures need to be instituted to protect users' sensitive information.

#### d. Bridging the Usage Access Gap

ODR service providers can create traffic on their platforms by raising awareness of the existence and capabilities of ODR services to address barriers to justice.

Mechanisms to enhance the public's motivation to use ODR platforms will therefore help bridge the gap in physical and material access, promote digital literacy, and promote traffic on the sites of ODR providers. This will consequently contribute to the contraction of the digital divide, with a view to increasing the diffusion rate of ODR services.

## CHAPTER FIVE: VIDEOCONFERENCING

### 5.1 The Potential of Videoconferencing

Informational, physical, material and financial barriers to justice adversely affect the capacity of justice seekers to access the justice system. In fact, those seeking justice have been demeaned as supplicants due to such barriers.<sup>313</sup> The literature demonstrates that videoconferencing is one of the technologies that can transcend geographical distance to connect justice seekers to legal service providers<sup>314</sup> and this technology is becoming increasingly ubiquitous for justice delivery.<sup>315</sup> To clarify, videoconferencing is an interactive technology, which permits simultaneous interaction from two or more locations via two-way video and audio transmissions.<sup>316</sup> Videoconferencing thus employs its interactivity and interconnectivity to transcend distance and facilitate communication between onsite and remote participants. These features can be leveraged for access to justice by ameliorating the physical, material, financial and informational barriers, amongst others, in order to enhance legal health promotion, dispute avoidance, dispute management and adjudication.

In short, videoconferencing mediates distance barriers to justice; it connects institutions of justice with those seeking to avail themselves of these services and as such, minimizes the need to travel.<sup>317</sup> With this technology, individuals for whom physically traveling to the locations of institutions of justice is difficult, inconvenient or prohibitively expensive (for example, persons with disabilities, those living in geographically remote locations, or those with significant time and resource constraints) can communicate with institutions of justice from a convenient place.<sup>318</sup> Such provision reduces the cost of justice delivery, including its monetary cost and the risks

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<sup>313</sup> Roderick A. Macdonald, "Access to Justice in Canada Today" in Bass, Bogart & Zemans, *supra* note 19 at 27.

<sup>314</sup> See Aylwin & Moore, *supra* note 41 at 43.

<sup>315</sup> Karen Cohl & George Thomson, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services* (Toronto: The Law Foundation of Ontario, 2008) at 39.

<sup>316</sup> See Aaron Hass, "Videoconferencing in Immigration Proceedings" (2006) 5:1 *Pierce L Rev* 59 at 62.

<sup>317</sup> See Bailey, Burkell & Reynolds, *supra* note 3 at 200.

<sup>318</sup> See *Ibid* at 201.



associated with travelling.<sup>319</sup> This opportunity provided through technology expedites justice by minimizing the uncertainties and delays associated with travel for witnesses, legal counsel, interpreters, judges and the parties themselves.<sup>320</sup>

Videoconferencing may overcome distance barriers to justice by facilitating communication within a justice system, to enhance legal health promotion, dispute avoidance, dispute management and adjudication. Public legal education and information organizations (including law libraries) can hold videoconferencing sessions to deliver legal information to those who patronize them, particularly the inhabitants of remote and rural communities.<sup>321</sup> Legal clinics may also use this technology for dispute avoidance measures, such as counselling sessions in the resolution of family matters.<sup>322</sup> Additionally, videoconferencing may be employed alongside other technologies, such as the telephone, as a means of facilitating dispute management, including mediation and negotiation (or facilitation).<sup>323</sup> Aside from this, legal aid organizations use videoconferencing technology at self-help centres in some courts to provide pro bono legal advice or assistance.<sup>324</sup> These organizations also partner with local law firms and local community organizations to provide legal services or referrals for distant or isolated groups living in remote and rural areas, including the inhabitants of rural dwellers, and people in prisons and correctional facilities.<sup>325</sup> According to Legal Aid Queensland, Australia, the introduction of

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<sup>319</sup> See *R v Hainnu*, 2011 NUCJ 14 at para 57, 79 – 81, 96 – 98 (CanLII) [*Hainnu*].

<sup>320</sup> See Bailey, Burkell & Reynolds, *supra* note 3 at 200.

<sup>321</sup> Karen Cohl & George Thomson, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services* (Toronto: The Law Foundation of Ontario, 2008) at 39 – 40; American Association of Law Libraries Special Committee on Access to Justice, *Law Libraries and Access to Justice* (Chicago: USA; American Association of Law Libraries, July 2014) at 24.

<sup>322</sup> See Provincial Court of British Columbia, “Affordable access to justice for separating families” (17 January 2017), online: [www.provincialcourt.bc.ca/enews/enews-17-01-2017](http://www.provincialcourt.bc.ca/enews/enews-17-01-2017).

<sup>323</sup> See Salter & Thompson, *supra* note 3 at 133. The use of videoconference for dispute management has contributed significantly to access to justice as, for example, between 2015 and 2016, the Family Justice Services Division (FJSD) of the British Columbia Ministry of Justice, for example, used videoconferencing alongside telephone communication to mediate over 5,500 cases. See Provincial Court of British Columbia, “Affordable access to justice for separating families” (17 January 2017), online: [www.provincialcourt.bc.ca/enews/enews-17-01-2017](http://www.provincialcourt.bc.ca/enews/enews-17-01-2017).

<sup>324</sup> The California Administrative Office of the Courts, for example, now operates the Self Help and Referral Program (SHARP) to connect lawyers, support staff and self-represented litigants. Lawyers and support staff chiefly use videoconferencing to provide help with forms, legal information and education for self-represented litigants across three counties in California. The Program is now assisting an impressive number of people – 1,700 litigants a month. See Alex Smith Davis, “California Uses Video Conferencing to Extend Reach of Self-Help Center across Three Rural Counties” (22 June 2017), online: Self-Represented Litigation Network [www.srln.org/node/360/california-uses-video-conferencing-extend-reach-self-help-center-across-three-rural](http://www.srln.org/node/360/california-uses-video-conferencing-extend-reach-self-help-center-across-three-rural).

<sup>325</sup> See Legal Aid Queensland, “Technology Brings Justice to Rural and Regional Queensland” (2003) 5:28 Indigenous L Bulletin 20 (AustLII); Michael Trebilcock, “Report of the Legal Aid Review 2008” (Ministry of

videoconferencing has yielded double benefits for organizations, which can now use the equipment to provide legal advice to prisoners and the inhabitants of rural and regional communities.<sup>326</sup> The use of videoconferencing for all these legal services avoids some of the expenditure incurred by having to physically travel to institutions of justice.

Videoconferencing also increases access to justice in court matters. In Ghana and Canada, the technology is used for a variety of purposes. In Canada, videoconference is implemented in criminal matters for, among others, bail hearings/remote first appearances; search warrant applications; attendance of appeal hearings by the accused; conducting mental fitness assessments of inmates held in custody in non-urban locations; the entry of guilty pleas by accused persons held in custody; consultation of the legal counsel by accused held in custody; the fixing of dates, and witness testimonies.<sup>327</sup> In civil matters, videoconferencing is also used for arguing applications and motions or appeals; status hearings; oral submissions in certain proceedings; case/pre-trial conferences; solicitor-client assessment interviews, and witness testimonies.<sup>328</sup>

Similarly, Ghana is making significant progress in the use of videoconferencing to facilitate criminal and civil proceedings. For example, as part of its Ten-Year Strategic Development Plan, 2015-2025, one of the targets set by the Ghana Prison Service is to “embark on the use of technology, such as closed-circuit television systems to enhance the operation of the service”.<sup>329</sup> As part of its strategy, Ghana Prison Service plans to install closed-circuit television systems at

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Justice, Ontario, 2008), online: Ontario Ministry of the Attorney General

[www.attorneygeneral.jus.gov.on.ca/english/about/pubs/trebilcock/section4.php](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/trebilcock/section4.php).

<sup>326</sup> Legal Aid Queensland, “Technology Brings Justice to Rural and Regional Queensland” (2003) 5:28 Indigenous L Bulletin 20 (AustLII).

<sup>327</sup> See Jane Bailey, “Digitization of Court Processes in Canada” (October 2012), Cyberjustice Laboratory Working Paper No 2, online: Cyberjustice Laboratory

[www.cyberjustice.ca/files/sites/102/WP002\\_CanadaDigitizationOfCourtProcesses20121023.pdf](http://www.cyberjustice.ca/files/sites/102/WP002_CanadaDigitizationOfCourtProcesses20121023.pdf). For a recent examination of some of the advantages and disadvantages of videoconferencing from prisons, see Carolyn McKay, “Face-to-interface Communication: Accessing Justice by Video Link from Prison” in Asher Flynn & Jacqueline Hodgson, eds, *Access to Justice and Legal Aid: Comparative Perspective on Unmet Legal Needs* (Oxford, UK: Hart Publishing, 2017) at 103 – 121.

<sup>328</sup> See Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194, r 1.08; British Columbia *Evidence Act*, RSBC 1996, c 124, s 73.

<sup>329</sup> Ghana Prisons Service, *Ten – Year Strategic Development Plan 2015 – 2025*, at 30.

all prisons by 2025.<sup>330</sup> Further, the *High Court (Civil Procedure) (Amendment) Rules* allows evidence and the delivery of judgment by video link.<sup>331</sup>

Videoconference technology presents significant opportunities for access to justice. The technology can be employed to address distance barriers to enhance legal health promotion, dispute avoidance, dispute management, and adjudication. Consequently, I recommend equal distribution of access to justice resources and attention to the use of videoconference for legal health promotion, dispute avoidance, dispute management, and adjudication. The technology advances access to justice by mitigating the barriers to justice. However, the extent to which videoconferencing diffuses into the justice system in Ghana and Canada to facilitate access to justice will depend on whether there is, amongst other things, the enabling technological environment to accommodate videoconference communication. The literature highlights the digital divide as a significant obstacle to the use of videoconferencing to enable access to justice.<sup>332</sup> The next section attempts to examine how the digital divide relates to videoconferencing in Ghana and Canada, especially regarding videoconferencing in the courtroom.<sup>333</sup> Below, I highlight the variables that account for differences in videoconference usage in the courtroom to identify any lessons for addressing inequalities.

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<sup>330</sup> Ghana Prisons Service, *Ten – Year Strategic Development Plan 2015 – 2025*, at 57.

<sup>331</sup> *High Court (Civil Procedure) (Amendment) Rules*, 2014 (CI 87), Order 38, Rule 3A; Order 41, Rule 2A. At present, the *Criminal and Other Offences (Procedure) Act*, 1960 (Act 30) does not make provision for the use of video links in criminal proceedings. This thesis recommends an amendment of the Act to provide for the use of videoconferencing in criminal proceedings, as the technology presents advanced opportunities to supplement the Justice for All Programme in addressing the challenges of the criminal justice system. The provisions of the Ghanaian *Mutual Legal Assistance Act*, 2010 (Act 807), and the Canadian *Criminal Code*, RSC 1985, c C-46 can serve as the points of reference.

<sup>332</sup> See Bonnie Rose Hough, “Issues To Consider In Adopting New Technology” in Cabral *et al*, *supra* note 209 at 256; Karen Cohl & George Thomson, *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services* (Toronto: Law Foundation of Ontario, 2008) at 32.

<sup>333</sup> The choice of this aspect of videoconferencing usage is informed by advancement in the use of this technology in court proceedings in Canada, and to some extent, Ghana. See Jane Bailey, “Digitization of Court Processes in Canada” (October 2012) Cyberjustice Laboratory Working Paper No 2; Malik Abass Daabu, “CJ Commissions Video Conferencing Facility to Speed Up Justice Delivery” *Modern Ghana* (August 2013), online: [www.modernghana.com/sports/485586/cj-commissions-video-conferencing-facility-to-speed-up-justi.html](http://www.modernghana.com/sports/485586/cj-commissions-video-conferencing-facility-to-speed-up-justi.html).

## 5.2 Videoconferencing in Court Proceedings and the Digital Divide<sup>334</sup>

### 5.2.1 Motivation to Access

One major variable that may affect videoconferencing in court proceedings is whether the parties (and their legal representation) and the judge are motivated to use it.<sup>335</sup> Motivational digital access to videoconference facilities chiefly depends on the quality of the information produced by the technology and the awareness of its capabilities (which will in turn influence its *perceived usefulness*), together with the complexity of its navigation (or configuration), which in turn influences its *perceived ease of use*.

*Information quality:* The quality of information produced by videoconferencing, including response time and audio-visual quality, will influence its *perceived usefulness* in court proceedings.<sup>336</sup> The Court has thus held that the reception of the technology in court proceedings is “subject to the technical quality of the video transmission being acceptable to the trial judge”.<sup>337</sup> A party or judge is likely to oppose videoconferencing if s(he) perceives it as failing to meet the standards necessary for a trial, due to technical defects and the quality of the resulting audio-visual transmission.<sup>338</sup> In the 2016 Federal Court case of *United Air Lines Inc. v Cooperstock*, for example, Mr. Justice Phelan rejected a motion for testimony by videoconference from a witness in the UK, due to, among others, the perceived substantial interference of videoconferencing with the plaintiff’s right to conduct a proper cross-

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<sup>334</sup> Usage access may not be a major indicator of the divides in the procedures for appropriating videoconference facilities in the courtroom, because in many instances, videoconferencing equipment is customized for such a purpose. For this reason, the remainder of the discussion focuses on motivational access, physical and material access, and literacy access, which this thesis argues as the most common salient predictors of the divides in videoconference usage in the courtroom.

<sup>335</sup> Non-technological issues, such as jurisdictional issues, the cost of travel, the convenience of the witnesses, parties and counsel, and the ability of the witnesses, parties or lawyers to attend court can motivate the use of videoconferencing in court proceedings. See e.g. *R v Young*, 2000 SKQB 419, 201 Sask. R. 158 at para 8 (CanLII); *Ontario Rules of Civil Procedure*, RRO 1990, Reg 194, r 1.08 (5); *British Columbia Evidence Act*, RSBC 1996, c 124, s 73 (3).

<sup>336</sup> See Amy Salyzyn, “A New Lens: Reframing the Conversation about the Use of Video Conferencing in Civil Trials in Ontario.” (2012) 50:2 *Osgoode Hall LJ* 429 at 443; William H. DeLone & Ephraim R. McLean, “Information Systems Success: The Quest for the Dependent Variable” (1992) 3:1 *Information Systems Research* 60.

<sup>337</sup> See *Grahovac v Hartfiel*, 2015 BCSC 1142 at 73 (CanLII).

<sup>338</sup> *Ibid.*

<sup>338</sup> See e.g. *United Air Lines Inc. v Cooperstock*, 2016 FC 1314 (CanLII), *R v Nguyen*, 2015 SKQB 382 at para 17 (CanLII); *Hainnu*, *supra* note 319 at para 88. See also *R v Nguyen*, 2015 SKQB 382 at para 6, where the defence counsel objected to videoconferencing on the grounds that “the quality of proposed videoconferencing technology is poor”.

examination.<sup>339</sup> The Judge held: “the conduct of cross-examination will be stilted by the interface of videoconferencing and the use of document-sharing technology may result in delays that, while not extensive, will impede the flow of cross-examination.”<sup>340</sup> A party is more likely to apply for and a judge is more likely to accept videoconferencing, if the audio-visual transmission is perceived to be one of quality. In *Slaughter v Sluys*, for example, the judge allowed the use of videoconferencing due to the perceived quality of the audio-visual transmission:

Advances have been made in the quality of communication via videoconferencing, which has all but eliminated the problems often associated with videoconferencing in the early days of its use, which involved time delays in the transmission and which in turn frequently resulted in counsel and witnesses talking over each other and which made for a less than satisfactory method of conducting both direct or cross examination... Proper and full cross examination can take place even when witnesses are appearing via videoconferencing.<sup>341</sup>

The exposition in this section shows that quality audio-visual transmission has a major impact on the *perceived usefulness* of videoconferencing. A party or judge is likely to oppose videoconferencing, if the proposed videoconference is perceived to be of low quality, i.e. fails to meet the standards necessary for trial. On the other hand, a party or judge is likely to allow videoconferencing, if the proposed videoconferencing is perceived to be of high quality, i.e. produces sound and images of sufficient quality to allow the judge and the parties involved to derive the necessary findings. Hence, the quality of an audio-visual transmission will influence inequalities in the motivation to access videoconferencing (or the *perceived usefulness* of videoconferencing). The provision of materials to facilitate quality transmission can thus bridge the divides inherent in the beliefs of the parties and judges with regard to videoconferencing.

*Awareness:* The exposure of parties and the judge to the capabilities of videoconferencing will influence its *perceived usefulness* and subsequent acceptance.<sup>342</sup> In many cases, a judge will accept or oppose videoconferencing, depending on their exposure to the capabilities of this technology. Statements, such as: “[t]his Court’s experience with videoconferencing suggests

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<sup>339</sup> See *United Air Lines Inc. v Cooperstock*, 2016 FC 1314 (CanLII)

<sup>340</sup> *Ibid.*

<sup>341</sup> *Slaughter v Sluys*, 2010 BCSC 1576 at para 9 – 10 (CanLII). See also *R v D’Entremont*, 2009 ABPC 374 at para 11 (CanLII)

<sup>342</sup> Rogers, *Diffusion of Innovations*, *supra* note 111 at 163 – 169; Meghan Dunn & Rebecca Norwick, “Report of a Survey of Videoconferencing in the Courts of Appeals” (Federal Judicial Center, Washington, DC, 2006) at 1, online: Federal Judicial Center [www.fjc.gov/sites/default/files/materials/2017/VidConCA\\_0.pdf](http://www.fjc.gov/sites/default/files/materials/2017/VidConCA_0.pdf).

otherwise”;<sup>343</sup> “[I] have, in the recent past, found videoconferencing to be an acceptable and satisfactory method”,<sup>344</sup> and “[i]n my experience, a trial judge can see, hear and evaluate a witness’ testimony very well, assuming the video-conference arrangements are good”,<sup>345</sup> indicate that a judge’s awareness of the potential of videoconferencing will influence their *perceived usefulness* of the technology in court proceedings. Hence, a judge is likely to reject videoconferencing, if he or she is unaware of its potential; while judges who are aware of this potential are more likely to embrace it. Hence, the creation of awareness is cardinal to building the *perceived usefulness* of videoconferencing amongst parties and judges. Therefore, judges, lawyers, and police or prison officers could undertake education and training sessions on the capabilities and accessibility of the technology to facilitate the delivery of justice.<sup>346</sup> Moreover, the Courts and Ministries of Justice can utilize their websites to create public awareness of videoconferencing,<sup>347</sup> Members of court staff can brief the parties about videoconferencing when filing cases.

*Complexity of Navigation (Configuration)*: Setting up videoconferences for court proceedings can be complex and this is a further factor that can affect the use of this technology in courtroom proceedings. In fact, videoconference equipment has traditionally been complex and difficult to use<sup>348</sup> and this complexity originates in, for example, display devices, cabling, the equipment transmitting the images and sound to the display device, and system control.<sup>349</sup> Configuring these devices to provide quality audio-visual transmission can be very daunting and this complexity may deter most court staff or parties from using such technology. Due to the complexity of

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<sup>343</sup> *Hainnu*, *supra* note 319 at para 60

<sup>344</sup> *Slaughter v Sluys*, 2010 BCSC 1576 at para 9 (CanLII).

<sup>345</sup> *Pack all manufacturing Inc. v Triad plastics Inc.*, 2001 CanLII 7655 at para 6 (ON SC).

<sup>346</sup> See e.g. British Columbia Law Institute, “Technology-Assisted and Remote Evidence Presentation: A Practice Resource for BC Lawyers” (2014) British Columbia Law Institute Study Paper No. 7, online: Social Sciences Research Network [ssrn.com/abstract=2547802](https://ssrn.com/abstract=2547802).

<sup>347</sup> See e.g. Court of Appeal for Ontario, “Guidelines: Teleconference and Videoconference Appearances in the Court of Appeal for Ontario” (May 1, 2017), online: Court of Appeal for Ontario [www.ontariocourts.ca/coa/en/notices/tele-video.htm](http://www.ontariocourts.ca/coa/en/notices/tele-video.htm); Supreme Court of British Columbia, “Administrative Notice: Video Conferencing” (August 1, 2010), online: Supreme Court of British Columbia [www.courts.gov.bc.ca/supreme\\_court/practice\\_and\\_procedure/practice\\_directions/administrative\\_notices/AN%20-%206%20Video%20Conferencing.pdf](http://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/practice_directions/administrative_notices/AN%20-%206%20Video%20Conferencing.pdf); Courts of Saskatchewan, “Protocol for the Use of Video Conferencing in the Court of Queen’s Bench for Saskatchewan”, online: Courts of Saskatchewan [www.sasklawcourts.ca/images/documents/Resources/QB\\_Video\\_Protocol.pdf](http://www.sasklawcourts.ca/images/documents/Resources/QB_Video_Protocol.pdf).

<sup>348</sup> See Steve Kaye, *The Manager's Pocket Guide to Effective Meetings* (Amherst; Massachusetts: HRD Press, 1998) at 145.

<sup>349</sup> See Deanne C. Siemer & Federal Judicial Center, USA, *Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial* (Boulder; USA: National Institute for Trial Advocacy, 2001) at 5 – 6.

videoconference equipment, the literature recommends the engagement of technical expertise to provide on-site and on-demand technical support for configuring and resolving technical issues.<sup>350</sup> Without such support, the effectiveness of response time and audio-visual quality will be hampered, which could have an adverse effect on the court proceedings concerned. As the Nunavut Court of Justice held in *R v Hainnu*:

If the videoconferencing equipment or facility used by a party fails to meet the standards necessary for a fair trial, the videoconferencing will be discontinued. Any resulting delay will then lie at the foot of the party that has failed to meet the Court's expectations.<sup>351</sup>

Hence, there is a need for technical experts on hand to ensure the uninterrupted use of videoconference equipment in the courtroom. Without such provision, the complexity of configuring videoconference equipment may deter its use in this context.

### 5.2.2 Physical and Material Access

The motivation to use videoconferencing due to its *perceived usefulness* does not end the process of its appropriation in court proceedings. There is an accompanying need for suitable equipment to facilitate its use. Inequalities in physical and material access to videoconferencing may contribute to its uneven use in the court system.<sup>352</sup> This is inevitably because courts furnished with videoconference equipment are well-positioned to take advantage of the technology at the expense of those without it.

In Canada, the Ministries of Justice and the Attorney General have collaborated with the courts to install the necessary equipment, i.e. computers or closed-circuit television systems and Internet facilities at various courts, prisons and correctional facilities, in order to enhance access to the technology from these endpoints.<sup>353</sup> Notwithstanding this, there remain gaps in physical

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<sup>350</sup> See Bailey, Burkell & Reynolds, *supra* note 3 at 203.

<sup>351</sup> See *Hainnu*, *supra* note 319 at para 88.

<sup>352</sup> See Bailey, Burkell & Reynolds, *supra* note 3 at 205; see Carolyn McKay, "Face-to-interface Communication: Accessing Justice by Video Link from Prison" in Asher Flynn & Jacqueline Hodgson, eds, *Access to Justice and Legal Aid: Comparative Perspective on Unmet Legal Needs* (Oxford, UK: Hart Publishing, 2017) at 116.

<sup>353</sup> See e.g. Ontario, Ministry of Attorney General, *Annual Report 2014-2015*, online: Ontario Ministry of the Attorney General [www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts\\_annual\\_14/](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_14/); Saskatchewan, Ministry of Justice, *Annual Report 2015 – 2016*, at 17, online: Government of Saskatchewan [publications.gov.sk.ca/documents/9/93474-2015-16\\_Justice\\_AR\\_web.pdf](http://publications.gov.sk.ca/documents/9/93474-2015-16_Justice_AR_web.pdf); British Columbia Ministry of Justice, Court Services Branch, "Videoconferencing in British Columbia", online: Canadian Forum on Civil Justice [www.cfcj-fcjc.org/sites/default/files/docs/hosted/18536-videoconferencing.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/hosted/18536-videoconferencing.pdf).



access and material access to the technology, given the unequal distribution of videoconferencing equipment across the country.<sup>354</sup> For instance, not all courts, prisons and correctional facilities are equipped with the technology.<sup>355</sup> There are also disparities between the quality of the equipment at courts connected to the technology and good connections are not equally distributed.<sup>356</sup>

The divides in physical and material access to videoconferencing have an adverse effect on the use of this technology to facilitate communication within the justice system. Inequalities in the distribution of equipment and quality of connection will influence the divides in videoconferencing in court proceedings. Courts that are not connected to videoconference facilities cannot employ such technology to overcome the distance barriers faced by users when accessing them. In addition, courts that are connected to the technology, but do not have such good equipment or connections cannot effectively employ the technology, because they cannot assure sufficient quality in the audio-visual transmission. Less sophisticated equipment and slow connection speeds will hamper the quality of the resulting audio-visual transmission and this can frustrate court proceedings. Courts connected via better equipment and high-speed connections are positioned to leverage the benefits of this technology and so there is a need to increase its availability and connectivity to ensure effective transmission.

### 5.2.3 Digital Literacy<sup>357</sup>

*Technical Literacy:* Setting up videoconferencing equipment requires a high degree of expertise to ensure quality in the audio-visual connection.<sup>358</sup> Where videoconferencing is permitted, the

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<sup>354</sup> See Bailey, Burkell & Reynolds, *supra* note 3 at 204 – 205.

<sup>355</sup> Pamela M. Hurley, “Vulnerable Adult Witnesses: The perceptions and experiences of Crown Prosecutors and Victim Services Providers in the use of testimonial support provisions” (Ottawa; Department of Justice Canada, 2013) at 19 – 20, online: Department of Justice Canada [www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr13\\_15a/rr13\\_15a.pdf](http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr13_15a/rr13_15a.pdf).

<sup>356</sup> See Bailey, Burkell & Reynolds, *supra* note 3 at 204 – 205.

<sup>357</sup> Cognitive literacy (i.e. prose literacy, document literacy, numeracy, problem-solving, and legal literacy) may play a minimal role in predicting the divides in the use of videoconference for court proceedings. However, technical literacy and socio-emotional literacy plays a major role in predicting the extent to which videoconferencing can be leveraged to facilitate communication in court proceedings. For this reason, the remainder of the discussion focuses on technical literacy and socio-emotional literacy.

<sup>358</sup> For an overview of quality audio-video transmission, see General Secretariat of the European Council, *Guides on Videoconferencing in Cross-Border Proceedings* (Luxembourg; European Union; Publications Office of the European Union, 2013) at 17 – 22.



court expects the parties, usually collaborating with court staff, to ensure that the videoconferencing equipment provides audio-visual transmission of sufficient quality to meet the standards of a fair trial.<sup>359</sup> A lack of experience in using videoconferencing technology can lead to communication problems. However, court staff rarely have the required experience of configuring videoconferencing equipment, due to the intricate technicalities involved.<sup>360</sup> This issue can then have an adverse effect on the extent to which the technology is used in videoconference proceedings. In *R v Nguyen*, for example, the Saskatchewan Queens Bench granted an application for testimony via videoconferencing, but with the proviso: “if the technology available at trial proves inadequate to the task, the defence application may be re-visited.”<sup>361</sup>

This phenomenon raises concerns about the digital divide. Differences in the experience of court personnel to assist parties with the configuration of videoconferencing equipment can contribute to the unequal usage of this technology, as parties attending courts with experienced staff can take advantage of the technology at the expense of those attending courts with less experienced staff. To address this concern, there is a need for training programmes for court staff on how to configure videoconference equipment. Courts could also collaborate with ICT specialists to set up the equipment. Such a collaborative effort would ensure the presence of ICT experts to minimize technical issues.

*Socio-emotional literacy*: The ability of individuals to communicate effectively when engaging in a videoconference and to protect their sensitive information during court proceedings will affect the extent to which they can leverage the technology to overcome the distance barriers to justice. The successful usage of videoconferencing involves users’ ability to implement the technology for communication in a responsible manner and to protect themselves from harm in digitally enhanced environments.<sup>362</sup>

The ability of remote participants (i.e. witnesses, lawyers and parties) to use videoconferencing responsibly for communication will have a significant impact on the extent to which they can

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<sup>359</sup> See Jane Bailey, “Digitization of Court Processes in Canada” (October 2012), Cyberjustice Laboratory Working Paper No 2.

<sup>360</sup> See Eric T Bellone, “Private Attorney-Client Communications and The Effect of Videoconferencing In The Courtroom” (2013) J Intl Commercial Law & Technology 24 at 37.

<sup>361</sup> *R v Nguyen*, 2015 SKQB 382 at para 17 (CanLII).

<sup>362</sup> Ng, *supra* note 129 at 1068.

leverage the technology to facilitate communication during court proceedings. Referencing the existing scholarship and empirical data from a survey of US courts, Bellone concludes that remote participants do not feel obliged to observe the same social conventions or niceties as they do in the courtroom, and the behaviour of some remote participants may alter, because they feel overwhelmed that they are ‘on TV’.<sup>363</sup> In addition, not all remote participants feel comfortable communicating via a videoconference as some people are so unaccustomed to videoconferencing or speaking on camera that they are uncomfortable with it.<sup>364</sup> Such attitudes on the part of remote participants can detract from the use of such technology in court proceedings. In *Miley v Abulaban*, for example, the Supreme Court of British Columbia held that it was reasonable to allow witnesses to appear personally before the court to give their evidence as:

leading or examining a witness by video conference is in many ways unnatural. You cannot readily observe the witness that you’re questioning. On some occasions, the camera shows the face of the witness, on other occasions, the camera shows the witness seated some distance away.<sup>365</sup>

Inequality in people’s attitudes when communicating via a videoconference raises another perspective of the digital divide. Courts are likely to discontinue videoconference proceedings, if the remote participant fails to conduct him or herself properly during the proceedings, but are likely to continue them, if the remote participant behaves properly. There is also the need for early planning and organization between the parties applying to appear by videoconference and the remote participant. In Canada, the Crown meets a witness ahead of time to assess their communication skills.<sup>366</sup> This initiative plays a key role in ensuring that a videoconference applicant informs and educates the remote participants about proper conduct during the proceedings. Courts can provide guidelines on this subject for the benefit of the parties.

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<sup>363</sup> See Eric T Bellone, “Private Attorney-Client Communications and The Effect of Videoconferencing In The Courtroom” (2013) J Intl Commercial Law & Technology 24 at 37. See also Pamela M. Hurley, “Vulnerable Adult Witnesses: The perceptions and experiences of Crown Prosecutors and Victim Services Providers in the use of testimonial support provisions” (Ottawa; Department of Justice Canada, 2013) at (“[w]ith videoconferencing, the witness behaves more casually” at 18).

<sup>364</sup> See Eric T Bellone, “Private Attorney-Client Communications and The Effect of Videoconferencing In The Courtroom” (2013) J Intl Commercial Law & Technology 24 at 37.

<sup>365</sup> *Miley v Abulaban*, 2014 BCSC 1905 at para 16 – 17 (CanLII).

<sup>366</sup> See Pamela M. Hurley, “Vulnerable Adult Witnesses: The perceptions and experiences of Crown Prosecutors and Victim Services Providers in the use of testimonial support provisions” (Ottawa; Department of Justice Canada, 2013) at 12, 19.

*Privacy protection:* The breach of privacy of individuals participating in videoconference proceedings remains a major concern over the use of this technology.<sup>367</sup> Privacy is of obvious concern when videoconferencing is used in court proceedings and prisons, where the identities of the participants and other confidential information need to be concealed.<sup>368</sup> In videoconference proceedings, it is important to ensure that videoconferencing service providers do not make copies of any proceedings that could be broadcast at a later date.<sup>369</sup> Remote participants also require appropriate literacy to be able to protect, determine and control what personal information they share, with whom and for how long.<sup>370</sup> Individuals using videoconference equipment should be able to identify those elements that should not be shared, in order to present the most effective case.<sup>371</sup> The capabilities of users to protect their sensitive information when using technology opens up another digital divide: one where persons with such knowledge can protect their privacy while engaging in videoconferences, while those without such knowledge may decline to use it or use it to their detriment. Therefore, the ability of individuals to protect their sensitive information will have an impact on the use of videoconferencing to facilitate access to justice.

### 5.3 Conclusion and Recommendations

This chapter has examined the extent to which videoconferencing can advance and improve access to justice. The resulting examination confirms that videoconferencing holds significant opportunities for promoting access to justice. Using its interactivity and interconnectivity, institutions of justice in Ghana and Canada could harness videoconferencing to overcome

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<sup>367</sup> M. Vijay Venkatesh et al, "Audio-visual Privacy Protection for Video Conference" (Paper delivered at the IEEE International Conference on Multimedia and Expo, ICME 2009), online: University of Kentucky [http://www.vis.uky.edu/~cheung/doc/icme09\\_workshop.pdf](http://www.vis.uky.edu/~cheung/doc/icme09_workshop.pdf); Action Committee on Access to Justice in Civil and Family Matters, "Report of the Court Processes Simplification Working Group" (2013) at 8.

<sup>368</sup> Carolyn McKay, "Face-to-interface Communication: Accessing Justice by Video Link from Prison" in Asher Flynn & Jacqueline Hodgson, eds, *Access to Justice and Legal Aid: Comparative Perspective on Unmet Legal Needs* (Oxford, UK: Hart Publishing, 2017) at 114 - 116.

<sup>369</sup> Action Committee on Access to Justice in Civil and Family Matters, "Report of the Court Processes Simplification Working Group" at 8.

<sup>370</sup> Katriina Kilpi, Shirley A. Elprama & An Jacobs, "Exploring Privacy and Trust Issues in A Future Immersive Videoconferencing System" in Ralph H. Sprague, Jr., ed, *Proceedings of the Forty-Sixth Annual Hawaii International Conference on System Sciences* (Washington, DC, USA: IEEE Computer Society Conference Publishing Services, 2013) at 316.

<sup>371</sup> See Bonnie Rose Hough & Richard Zorza, "Tech-Supported Triage: The Key to Maximizing Effectiveness and Access" in James E Cabral *et al*, "Using Technology to Enhance Access to Justice" (2012) 26:1 Harv JL & Tech 241 at 301.

barriers to justice, thus enhancing legal health promotion, dispute avoidance, dispute management and adjudication. However, the extent to which the technology can diffuse or has diffused into the justice system in Ghana and Canada to facilitate communication in the court system depends on how well it negotiates the digital divide. As in Web-based legal information and ODR, the examination in this chapter shows a potential negative correlation between the digital divide and the diffusion rate of videoconferencing. In fact, videoconferencing diffuses slowly into the justice system when the digital divide is enlarged, but diffuses at a faster rate when the digital divide gap contracts. Hence, institutions of justice should implement proactive policies and measures to reduce the digital divide, thus maximizing the use of videoconferencing in court proceedings.

The examination ultimately shows that there are various determinants of this technology's diffusion rate. Judges, parties (including the government), and court staff influence inequalities in the appropriation stages of videoconferencing. Policies and measures to mitigate these inequalities should take into account the following recommendations:

a. Bridging the Motivational Access Gap

The examination shows that the attitude of judges and parties toward videoconferencing influences inequalities at the motivation stage with regard to accessing this technology. The judges and parties who perceive it as useful, due to the quality of information the technology produces and are exposed to, are more likely to accept its usage. Hence, policies to maximize videoconferencing should include measures to increase the quality of its information. Furthermore, education and training sessions for judges are required, in order to sensitize them to the importance of videoconferencing and its capabilities. Court staff must additionally inform parties of the existence and capabilities of videoconferencing in court proceedings. Judges can then inform and educate the parties involved, regarding the use of this technology and how it can help them overcome challenges such as distance barriers, particularly for witnesses. Finally, it is important for institutions of justice to install videoconferencing equipment that is easy to use.

#### b. Ensuring Physical and Material Access

Policies to maximize the use of videoconferencing should include mechanisms to increase the availability of effective equipment and connections in the courts. Disparities in the distribution of videoconference equipment could widen the justice gap, but courts connected to the technology would employ it to benefit those seeking to use it, while parties endeavouring to access courts without being connected to the technology could thus overcome the distance barriers to justice. However, this would come at a significant cost, as the installation of videoconference equipment in all courts would require a significant financial commitment. However, institutions of justice in Ghana and Canada should not abandon the idea of maximizing the availability of this technology in the courtroom and ensuring that most courts are connected to the technology.

#### c. Addressing Concerns over Digital Literacy

Policies to escalate the diffusion rate of videoconferencing should also consider mechanisms to increase digital literacy. Court employees need to be educated and trained in the configuration of videoconference equipment. They could also collaborate with technical experts to provide on-site and on-demand support to configure and operate technology during court proceedings. Such collaborative effort would require the availability of IT experts to resolve technical issues.

Parties requesting to use videoconferencing facilities should take adequate steps towards meeting their witnesses beforehand, in order to inform them of the circumstances of the witnesses. The parties should then educate the witness in proper conduct for participation in a videoconference. The courts could moreover include guidelines for proper conduct during videoconference proceedings, in order to direct the parties. Face-to-face communication should be employed, whenever it is practically difficult to use videoconferencing, due to the circumstances of the remote participant.

The diffusion rate of videoconferencing for court proceedings will escalate if institutions of justice in Ghana and Canada formulate and enact proactive policies to bridge inequalities in the motivation to access, physical and material means of access, and digital literacy. The use of videoconferencing in the court system requires significant financial commitment and institutions

of justice should not relent in terms of increasing its availability, given the diverse opportunities presented by technology to ameliorate distance barriers to justice.

## **CHAPTER SIX: CONCLUSION**

This thesis has examined the extent to which technology advances access to justice in Ghana and Canada. The resulting examination confirms the potential of certain technologies, such as Web-based legal information, ODR and videoconferencing to promote access to justice. Indeed, these technologies present diverse opportunities for addressing the informational, physical, material and financial barriers to justice. The positive effects of the above-mentioned technologies on these barriers can also enhance legal health promotion, dispute avoidance, dispute management and adjudication.

The institutions of justice in Canada have gone to great lengths to harness the potential of these technologies for access to justice. This thesis has highlighted the existence of many sources of legal information and the benefits of using the full spectrum of ODR services, i.e. problem diagnosis, negotiation, facilitation and adjudication, and the use of videoconferencing for diverse purposes in both civil and criminal proceedings. These are cited as some of the mechanisms introduced by institutions of justice to address the barriers inhibiting many Canadians from accessing the justice system. In the same vein, the institutions of justice in Ghana are making significant progress in leveraging the potential of technology to ameliorate the barriers inhibiting many Ghanaians from accessing the justice system. However, compared to Canada, the institutions of justice in Ghana have not adequately taken advantage of modern technologies to enhance the justice system. The mechanisms integrated in Canada may thus provide useful lessons for Ghana in its quest to use technology as a means of improving access to justice.

As technology-based access to justice initiatives basically involve digital devices and their functionalities, an enabling technological environment is a prerequisite for these initiatives; heightening their rate of diffusion into the corresponding justice systems. However, there is a tendency to focus superficially on the potential of technology, without a critical consideration of their rate of diffusion into the justice system, i.e. whether the intended beneficiaries are accessing

and benefiting from them. There is consequently a need for mechanisms to measure the diffusion rate of technology for access to justice, or the extent to which the intended beneficiaries access and use these technologies. The literature argues that digital divides offer a potential mechanism for such measurement. As the Australian National Alternative Dispute Resolution Advisory Council (NADRAC) point out: “[w]hile information technology theoretically promotes access, the ‘digital divide’ may prevent this potential from being realized in practice.”<sup>372</sup> Therefore, without careful planning and continuous assessment, institutions of justice risk expending on initiatives that yield minimal impact; indeed, new patent and latent barriers to justice may go unaddressed.

There has been significant discussion on the impact of the digital divide on technology-based access to justice initiatives. However, the variables accounting for the digital divide remain undefined in the literature. This issue can be attributed to the unsettled parameters of the concept. I present a digital access model, involving a sequence of indicators spanning motivational access, physical and material access, literacy access, and usage access for investigating the digital divide. The model presents a promising framework for analysing or measuring the extent to which technologies diffuse into justice systems to enhance access to justice.

The institutions of justice in Ghana and Canada could employ this digital access model to determine the prospects of success or otherwise of technology for access to justice. After examining the digital divide and the technologies for access to justice, I have found two potential relationships involving the impact of the digital divide on technology-based access to justice initiatives, and the interaction between institutions of justice and the intended beneficiaries of the technologies involved. There is a potentially negative correlation between technology and the digital divide, because widening the digital divide reduces the technology diffusion rate, while contracting the digital divide escalates the diffusion rate of technologies promoting access to justice. Hence, the institutions of justice in Ghana and Canada should take adequate steps to shrink the digital divide, subsequently escalating the diffusion rate of technology-based access to justice initiatives.

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<sup>372</sup> National Alternative Dispute Resolution Advisory Council, *Dispute Resolution and Information Technology Principles for Good Practice (Draft)* (March 2002) at 7, online: Government of Australia [www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/dispute-resolution-information-technology-principles-good-practice.pdf](http://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/dispute-resolution-information-technology-principles-good-practice.pdf).



Without proactive policies and actions to reduce the digital gap, there will be a potential supply-usage deficit of technology-based access to the justice initiatives being developed by the institutions of justice in Ghana and Canada. While these institutions of justice increasingly harness the potential of technology to enhance access to justice for the individuals seeking it, the latter will be less likely to use these technologies to address barriers to justice. As the October 2016 Survey conducted by the Action Group on Access to Justice confirmed, only 26% of Ontarians seeking legal advice use online legal resources, notwithstanding the abundance of legal information, and the appropriate connection with technology in the Province. The supply-usage deficit phenomenon provides useful lessons for Ghana in its quest to use technology for access to justice.

The problems accounting for the supply-usage deficit can be dichotomized as operational and usage barriers, which distinctively influence the inequalities in the variables of digital access. I argue that the operational barriers are the main cause of the divides in motivational access, while the usage barriers create divides in physical and material, literacy and usage access. Hughes cites ‘operational barriers’ to describe the way in which initiatives intended to increase access to justice are structured or implemented.<sup>373</sup> In this context, the way institutions of justice structure and implement technology-based access to justice initiatives can lead those who patronize them developing a negative attitude of *perceived usefulness* and *perceived ease of use* (i.e. motivational access problems) towards such technologies. Accordingly, although institutions of justice are now providing more information, more ODR mechanisms and more videoconferences, deficiencies in these initiatives include low information quality, poor marketing and a high level of complexity in their navigation (or operation) and information, which discourages many potential users (i.e. the ‘want nots’) from accessing them. Hence, institutions of justice should address the operational barriers, in order to motivate the intended beneficiaries to use the appropriate technology. Furthermore, the usage barriers also define the capabilities of the intended beneficiaries to use the relevant technologies. Individuals without a means of access (‘have nots’), digital illiterates (‘know nots’), and those who use the medium of access for different purposes (non-beneficial users) are unlikely to take advantage of technological innovations. The present examination shows that those facing operational and

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<sup>373</sup> Hughes, “Access to Justice Through Generic Solution”, *supra* note 98 at 13.

usage barriers to technology are likely to outnumber those who are fully privileged to leverage it. This phenomenon results in the supply-usage deficit, as fewer people will be privileged to use the numerous technologies that are available.

In consequence, institutions of justice should implement proactive policies and actions to address the operational and usage barriers to the technology's potential for promoting access to justice. Heightening the diffusion rate of technology for access to justice should include improving technologies and building the capabilities of the intended beneficiaries, in order to harness them. Without careful planning, institutions of justice risk expending on initiatives that will have minimal impact on access to justice. I therefore suggest mechanisms that these institutions could include in their corresponding policies and actions. In summary, measures for providing Web-based legal information could incorporate:

1. a collaborative and concerted effort among institutions of justice;
2. the establishment of a national portal of legal information (including, but not limited to, the primary sources of law and justice-related information);
3. intensifying awareness;
4. ensuring the accessibility of the website and legal information;
5. ensuring cyber-safety;
6. providing assistive mechanisms, and
7. increasing access to Internet-connected computers.

Measures to increase the ODR diffusion rate should also include:

1. building quality information content;
2. marketing the services;
3. providing assistive tools, and
4. a collaborative effort to increase access to Internet-connected computers.

Lastly, policies and actions to increase the diffusion rate of videoconferencing in court proceedings could:

1. ensure quality information;
2. provide education and training for judges and court staff;

3. introduce mechanisms to market videoconferencing to the parties involved;
4. increase the availability of better equipment and better connection in the courts, and
5. institute mechanisms to coach remote participants on videoconference communication and privacy.

Aside from the above, institutions of justice need to include mechanisms for evaluating the prospects of success or otherwise of technology-based access to justice initiatives. Increasing scholarship on access to justice reforms recommends more comprehensive studies on the extent to which such reforms actually improve access to justice.<sup>374</sup> Empirical studies provide a lens for measuring the impact of these reforms. Without any empirical studies to measure the prospects of success or likelihood of failure of technologies for access to justice, institutions of justice cannot assess how far technologies have diffused into justice systems to promote access to justice. Indeed, new patent and latent barriers to justice may go unaddressed. I recommend the digital access model as a promising framework for such empirical studies. Measuring the inequalities in the variables of digital access, i.e. motivational access, physical and material access, literacy and usage access holds the potential for determining and understanding whether technology can or has advanced access to justice. It is necessary to be able to consistently measure changes in the negative correlation between the digital divide, the diffusion rate of technology-based access to justice initiatives, and the supply-usage phenomenon among institutions of justice and the intended users. Further studies should therefore measure the differences between the intended and actual users (i.e. those who have used or are using the relevant technologies). The evaluation of this difference would give a better understanding of the extent to which such technology has advanced access to justice.

Technology does indeed present broad and significant potential for access to justice and the institutions of justice in Ghana and Canada should be relentless in harnessing this potential to ameliorate the barriers to justice; thereby improving the pathways to justice, namely legal health promotion, dispute avoidance, dispute management and adjudication. However, institutions should equally consider the diffusion rate of these technologies, or the extent to which the

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<sup>374</sup> See e.g. Action Committee, *A Roadmap for Change*, *supra* note 19 at 23; Julia Quigley & Graham Sharp & Janelle Souter, ““Action” to Justice: Addressing Access to Justice in the Saskatchewan Court of Queen’s Bench” (Saskatchewan; University of Saskatchewan College of Law, 2016) at 13; Bouclin, McGill & Salyzyn, *supra* note 24; Jonathan Silver & Trevor C. W. Farrow, “Canadian Civil Justice: Relief in Small and Simple Matters in an Age of Efficiency” (2015) 8:4 *Erasmus L Rev* 232.

intended users access or are currently accessing and using them. The digital access model offers prospects for such programmes.

## BIBLIOGRAPHY

### LEGISLATION: CANADA

*British Columbia Evidence Act*, RSBC 1996, c 124.  
*Civil Resolution Tribunal Act*, 2012, SBC 2012, C-25.  
*Criminal Code*, RSC 1985, c C-46.  
*Ontario Rules of Civil Procedure*, RRO 1990, Reg 194.

### LEGISLATION: GHANA

*Alternative Dispute Resolution Act*, 2010 (Act 798).  
*Council for Law Reporting Act*, 1972 (NRCD 64).  
*Criminal and Other Offences (Procedure) Act*, 1960 (Act 30).  
*High Court (Civil Procedure) (Amendment) Rules*, 2014 (CI 87).  
*Legal Aid Scheme Act*, 1997 (Act 542).  
*Mutual Legal Assistance Act*, 2010 (Act 807).

### JURISPRUDENCE: CANADA

*Canada (Attorney General) v Jodhan*, 2012 FCA 161 (CanLII).  
*Encorp Pacific (Canada) v B.C. Bottle Depot Association*, 2009 BCSC 1657 (CanLII).  
*Grahovac v Hartfiel*, 2015 BCSC 1142 (CanLII).  
*Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87.  
*Miley v Abulaban*, 2014 BCSC 1905 (CanLII).  
*Pack all manufacturing Inc. v Triad plastics Inc.*, 2001 CanLII 7655 (ON SC).  
*Pintea v Johns*, 2017 SCC 23 (CanLII).  
*R v Hainnu*, 2011 NUCJ 14 (CanLII).  
*R v Nguyen*, 2015 SKQB 382 (CanLII).  
*R v Parrott*, 2001 SCC 3, [2001] 1 SCR 178.  
*R v Young*, 2000 SKQB 419, 201 Sask. R. 158 (CanLII).  
*Slaughter v Shuys*, 2010 BCSC 1576 (CanLII).  
*Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 SCR 31.  
*United Air Lines Inc. v Cooperstock*, 2016 FC 1314 (CanLII).  
*Wadden v 470139 B.C. Ltd.*, 2014 BCSC 747.  
*Wong v Section 1 of The Owners, Strata Plan N.W. 2320 et al*, 2017 BCCRT 25 (CanLII).

### JURISPRUDENCE: GHANA

*Adofu v Attorney-General* [2005-2006] SCGLR 42.  
*Bako-Alhassan v Attorney-General* (24 April 2013), J1/22/2012 (SC).

*Mensah v The Chairman, Electoral Commission and Others* (27 February 2015), JI/11/2015 (SC).

## SECONDARY MATERIALS: MONOGRAPHS

- Action Committee on Access to Justice in Civil and Family Matter. *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, April 2013).
- American Association of Law Libraries Special Committee on Access to Justice. *Law Libraries and Access to Justice* (Chicago, USA: American Association of Law Libraries, 2014).
- Canadian Bar Association Task Force on Legal Literacy. *Reading the Legal World: Literacy and Justice in Canada* (Ottawa: Canadian Bar Association, 1992).
- Canadian Council of Administrative Tribunals. *Literacy and Access to Administrative Justice in Canada: A Guide for the Promotion of Plain Language* (Ottawa: University of Ottawa, 2005).
- CBA Access to Justice Committee. *Reaching Equal Justice: An Invitation to Envision and Act* (Ottawa: Canadian Bar Association, 2013).
- Currie, Ab. *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Ottawa: Department of Justice Canada, 2007).
- Gorham, Ursula. *Access to Information, Technology, and Justice: A Critical Intersection* (Maryland; USA: Rowman & Littlefield, 2017).
- Kaye, Steve. *The Manager's Pocket Guide to Effective Meetings* (Amherst, Massachusetts: HRD Press, 1998).
- Lodder, Arno R. & John Zeleznikow. *Enhancing Dispute Resolution Through the Use of Information Technology* (Cambridge; New York: Cambridge University Press, 2010).
- Organization for Economic Co-operation and Development (OECD). *Adults, Computers and Problem Solving: What's the Problem?* (Paris: OECD Publishing, 2015).
- OECD, Statistics Canada. *Literacy for Life: Further Results from the Adult Literacy and Life Skills Survey* (Paris: OECD Publishing, 2011).
- Ponte, Lucilie M. & Thomas D. Cavenagh. *Cyberjustice: Online Dispute Resolution (ODR) for E-Commerce* (Upper Saddle River, N J: Pearson/Prentice Hall, 2005).
- Quansah, Emmanuel Kwabena. *The Ghana Legal System* (Accra, Ghana: Black Mask Limited, 2011).
- Rogers, Everett M. *Diffusion of Innovations*, 5th ed (New York; USA: The First Press, 2003).
- Siemer, Deanne C. & Federal Judicial Center, USA. *Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial* (Boulder, USA: National Institute for Trial Advocacy, 2001).
- Susskind, Richard. *Tomorrow's Lawyer: An Introduction to Your Future* (Oxford, UK: Oxford University Press, 2013).
- Trebilcock, M. J., Lorne Sossin & Anthony J Duggan. *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012).
- Van Dijk, Jan A. G. M. *The Deepening Divide: Inequality in the Information Society* (Thousand Oaks, California: SAGE Publications, 2005).
- Wahab, Mohamed, Ethan Katsh & Daniel Rainey. *Online Dispute Resolution: Theory and Practice, A Treatise on Technology and Dispute Resolution* (The Hague: Eleven International Publishing, 2012).

Wang, Faye Fangfei. *Online Dispute Resolution: Technology, Management and Legal Practice From An International Perspective*, (Oxford: Chandos Publishing, 2009).

Zariski, Archie. *Legal Literacy: An Introduction to Legal Studies* (Edmonton, Canada: AU Press, 2014).

## SECONDARY MATERIALS: ARTICLES

- AfriMAP, The Open Society Initiative for West Africa & The Institute for Democratic Governance. "Ghana Justice Sector and the Rule of Law: A Discussion Paper" (The Open Society Initiative for West Africa, 2007).
- Akuamoah, Samuel Asare. *The Justice for All Programme, Its Impact on Ghana's Prisons System: A Case Study of Remand Prisoners at The Nsawam Medium Security Prison* (MA Dissertation, University of Ghana, 2012).
- Atuguba, Raymond A., Kissi Agyebeng & Enyonam Dedey. "Access to Justice in Ghana: The Real Issues", (December 2006), online:  
[www.ladagroupgh.com/docs/5854320d48f0ed75317469e0d04679eeAccess%20to%20Justice%20In%20Ghana%20-%20The%20Real%20Issues.pdf](http://www.ladagroupgh.com/docs/5854320d48f0ed75317469e0d04679eeAccess%20to%20Justice%20In%20Ghana%20-%20The%20Real%20Issues.pdf).
- Aylwin, Nicole & Lisa Moore. "Rural & Remote Access to Justice: A Literature Review" (Toronto, Ontario: Canadian Forum for Civil Justice, November 2015).
- Badeva-Bright, Mariya & Dr Oluwatoyin Badejogbin. "Free Access to The Law in Africa" in Southern Africa Litigation Centre, Judiciary of Malawi & National Association of Women Judges and Magistrates of Botswana, *Goal 16 of the Sustainable Development Goals: Perspectives from Judges and Lawyers in Southern Africa on Promoting Rule of Law and Equal Access to Justice* (Johannesburg, South Africa: Southern Africa Litigation Centre, 2016).
- Bailey, Jane. "Digitization of Court Processes in Canada" (October 2012), Cyberjustice Laboratory Working Paper No 2, online: Cyberjustice Laboratory  
[www.cyberjustice.ca/files/sites/102/WP002\\_CanadaDigitizationOfCourtProcesses20121023.pdf](http://www.cyberjustice.ca/files/sites/102/WP002_CanadaDigitizationOfCourtProcesses20121023.pdf).
- Bailey, Jane, Jacquelyn Burkell & Graham Reynolds. "Access to Justice for All: Towards an "Expansive Vision" of Justice and Technology" (2013) 31 Windsor YB Access Just 181.
- Barendrecht, Maurits. "Legal Aid, Accessible Courts or Legal Information? Three Access to Justice Strategies Compared" (2011) 11:1 Global Jurist 1.
- Barendrecht, Maurits et al. "Trend Report 4 - ODR And The Courts: The Promise of 100% Access To Justice?" (The Hague Institute for Innovation of Law, 2016), online:  
[www.onlineresolution.com/hiil.pdf](http://www.onlineresolution.com/hiil.pdf).
- Baroudi, Jack J., Margrethe H. Olson & Blake Ives. "An Empirical Study of the Impact of User Involvement on System Usage and Information Satisfaction" (1986) 29:3 Comm ACM 232.
- Bellone, Eric T. "Private Attorney-Client Communications and The Effect of Videoconferencing In The Courtroom" (2013) J Intl Commercial Law & Technology 24.
- Bouclin, Suzanne, Jena McGill & Amy Salyzyn. "Mobile and Web-Based Legal Apps: Opportunities, Risks and Information Gaps" CJLT [Forthcoming in Fall 2017].
- Braeutigam, Andrea M. "What I Hear You Writing Is...Issues in ODR: Building Trust and Rapport in the Text Based Environment" (2006) 38 U TOL L Rev 101.
- Brake, David R. "Are We All Online Content Creators Now? Web 2.0 and Digital Divides" (2014) 19 J Computer-Mediated Communication 591.

- Brannigan, Colm. "Online Dispute Resolution" in Allan Stitt, ed, *Alternative Dispute Resolution Practice Manual* (North York, Ontario: CCH Canadian Limited, 1996).
- Cabral, James E et al. "Using Technology to Enhance Access to Justice" (2012) 26:1 Harv JL & Tech 241.
- Chuan-Chuan Lin, Judy, & Hsipeng Lu. "Towards an Understanding of The Behavioural Intention to Use a Web Site" (2000) 20 Intl J Information Management 197.
- Cohl, Karen & George Thomson. "Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services" (Toronto: Law Foundation of Ontario, 2008).
- Condlin, Robert J. "Online Dispute Resolution: Stinky, Repugnant, or Drab" (2016) U of Maryland Legal Studies Research Paper No. 2016-40.
- Conklin, William E. "Whither Justice? The Common Problematic of Five Models of "Access to Justice" (2001) 19 Windsor YB Access Just 297.
- Cook, Richard C. "Access to Justice and Land Disputes in Ghana's State Courts: The Litigants' Perspective" (2004) J Legal Pluralism 1.
- Cotter, Brent. "Thoughts on a Coordinated and Comprehensive Approach to Access to Justice in Canada" (2012) 63 UNBLJ 54.
- Crump, Barbara & Andrea McIlroy. "The Digital Divide: Why the "don't-wants-tos" wont Compute: Lessons from a New Zealand ICT Project" (2003) 8:12 First Monday, online: [journals.uic.edu/ojs/index.php/fm/article/view/1106/1026](http://journals.uic.edu/ojs/index.php/fm/article/view/1106/1026).
- Cullen, Rowena. "Addressing the Digital Divide" (2001) 25:5 Online Information Rev 311.
- Da Silva, Pereira & Loureiro da Silva. "Digital Inclusion and Electronic Government: Looking for Convergence in the Decade 1997-2008" in Information Resource Management Association, ed, *Digital Literacy: Concepts, Methodologies, Tools and Applications* Vol 1 (Hershey, USA: Information Science Reference, 2013).
- Davis, Fred D. "Perceived Usefulness, Perceived Ease of Use, and User Acceptance of Information Technology" (1989) 13:3 MIS Quarterly 319.
- Davis, Fred D., Richard P. Bagozzi & Paul R. Warshaw. "User Acceptance of Computer Technology: A Comparison of Two Theoretical Models" (1989) 35:8 Management Science 982.
- Davison, Elizabeth L. & Shelia R. Cotton. "Connection Disparities: The Importance of Broadband Connections in Understanding Today's Digital Divide" in Ferro, Enrico, et al, eds, *Handbook of Research on Overcoming Digital Divides: Constructing an Equitable and Competitive Information Society* (Hershey, PA: IGI Global, 2009).
- DeLone, William H. & Ephraim R. McLean. "Information Systems Success: The Quest for the Dependent Variable" (1992) 3:1 Information Systems Research 60.
- DiMaggio, Paul et al. "Digital Inequality: From Unequal Access to Differentiated Use" in Kathryn M. Neckerman, ed, *Social Inequality* (New York, NY: Russell Sage Foundation, 2004).
- Dodge, Amanda. "Access to Justice Metrics Informed by the Voices of Marginalized Community Members: Themes, Definitions and Recommendations Arising from Community Consultations" (Ottawa: Canadian Bar Association 2013), online: Canadian Bar Association [www.cba.org/CBA/cle/PDF/JUST13\\_Paper\\_Dodge.pdf](http://www.cba.org/CBA/cle/PDF/JUST13_Paper_Dodge.pdf).
- Donner, Jonathan, Shikoh Gitau & Gary Marsden. "Exploring Mobile-only Internet Use: Results of a Training Study in Urban South Africa" (2011) 5 Intl J Communication 574.



- Eisen, Joel B. "Are We Ready for Mediation in Cyberspace?" (1998) *Brigham Young UL Rev* 1305.
- Farrow, Trevor CW. "What is Access to Justice?" (2014) 51 *Osgoode Hall LJ* 957.
- Friedman, Lawrence M. "Access to Justice: Social and Historical Context" in Mauro Cappelletti & John Weisner, eds, *Access to Justice: Promising Institutions*, Vol II, Book 1 (Dott. A. Giuffrè Editore; Milan: Sijthoff & Noordhoff, 1978).
- Friemel, Thomas N. "The Digital Divide Has Grown Old: Determinants of A Digital Divide Among Seniors" (2016) 18:2 *New Media & Society* 313.
- Ghobadi, Shahla & Zahra Ghobadi. "How Access Gaps Interact and Shape Digital Divide: A Cognitive Investigation" (2015) 34:4 *Behaviour & Information Technology* 330.
- Gordon, Julia R. "Legal Services and The Digital Divide" (2001) 12 *Alb LJ Sci & Tech* 809.
- Gunkel, David J. "Second Thoughts: Toward A Critique of The Digital Divide" (2003) 5:4 *New Media & Society* 499.
- Haight, Michael, Anabel Quan-Haase & Bradley A Corbett. "Revisiting the Digital Divide in Canada: The Impact of Demographic Factors on Access to The Internet, Level of Online Activity, and Social Networking Site Usage" (2014) 17:4 *Information, Communication & Society* 503.
- Hargittai, Eszter & Amanda Hinnant. "Digital Inequality: Differences in Young Adults' Use of the Internet" (2008) 35:5 *Communication Research* 602.
- Hass, Aaron. "Videoconferencing in Immigration Proceedings" (2006) 5:1 *Pierce L Rev* 59.
- Hon Mr. Justice Adams, George W & Naomi L Bussin. "Alternative Dispute Resolution and Canadian Courts: A Time for Change" (1995) 17:2 *Adv Q* 133.
- Hough, Bonnie Rose. "Let's Not Make It Worse: Issues to Consider In Adopting New Technology" in James E Cabral *et al*, "Using Technology to Enhance Access to Justice" (2012) 26:1 *Harv JL & Tech* 241.
- Hough, Bonnie Rose & Richard Zorza. "Tech-Supported Triage: The Key to Maximizing Effectiveness and Access" in James E Cabral *et al*, "Using Technology to Enhance Access to Justice" (2012) 26:1 *Harv JL & Tech* 241.
- Howland, Joan Sidney. "The 'Digital Divide': Are We Becoming a World of Technological 'Haves' And 'Have-Nots?'" (1998) 16:5 *The Electronic Library* 287.
- Hughes, Patricia. "Advancing Access to Justice Through Generic Solutions: The Risk of Perpetuating Exclusion" (2013) 31:1 *Windsor YB Access Just* 1.
- Hurley, Pamela M. "Vulnerable Adult Witnesses: The Perceptions and Experiences of Crown Prosecutors and Victim Services Providers in The Use of Testimonial Support Provisions" (Ottawa: Department of Justice Canada, 2013).
- Igbaria, Magid, Tor Guimaraes & Gordon B. Davis. "Testing the Determinants of Microcomputer Usage via a Structural Equation Model" (1995) 11:4 *J Management Information Systems* 87.
- Kilpi, Katriina, Shirley A. Elprama & An Jacobs. "Exploring Privacy and Trust Issues in A Future Immersive Videoconferencing System" in Ralph H. Sprague, Jr., ed, *Proceedings of the Forty-Sixth Annual Hawaii International Conference on System Sciences* (Washington, DC, USA: IEEE Computer Society Conference Publishing Services, 2013).
- King, Max David. "Free and Open Access to Legal Resources Through CanLII" (2013) 38 *Can L Libr Rev* 18.

- Kuunifaa, Cletus D. "Access to Information Legislation as a Means to Achieve Transparency in Ghanaian Governance: Lessons from the Jamaican Experience" (2012) 38:2 IFLA J 175.
- Legal Aid Queensland. "Technology Brings Justice to Rural and Regional Queensland" (2003) 5:28 Indigenous L Bulletin 20 (AustLII).
- Legg, Michael. "The Future of Dispute Resolution: Online ADR And Online Courts" (2016) UNSW Law Research Paper No. 2016/71.
- Lindsay, Sally. "Disability and The Digital Divide: Gaps and Future Directions" in Cassie M. Evans, ed, *Internet Issues: Blogging, the Digital Divide and Digital Libraries* (Commack, New York, USA: Nova Science Publishers, Inc., 2010).
- Macdonald, Roderick A. "Access to Justice in Canada Today: Scope, Scale and Ambitions" in Julia Bass, W. A. Bogart & Frederick H. Zemans, eds, *Access to Justice for a New Century: The Way Forward* (Toronto: Law Society of Upper Canada, 2005).
- MacLennan, Sherry. "Empowerment, Technology, and Family Law" in Karim Benyekhlef et al, *eAccess to Justice* (Canada: University of Ottawa Press, 2016).
- McHenry, Giulia et al. "The Digital Divide Is Closing, Even as New Fissures Surface" (Paper delivered at the TPRC 44: The 44th Research Conference on Communication, Information and Internet Policy 2016, 27 September 2016), online: Social Science Research Network [ssrn.com/abstract=2757328](https://ssrn.com/abstract=2757328).
- Mckay, Carolyn. "Face-to-interface Communication: Accessing Justice by Video Link from Prison" in Asher Flynn & Jacqueline Hodgson, eds, *Access to Justice and Legal Aid: Comparative Perspective on Unmet Legal Needs* (Oxford, UK: Hart Publishing, 2017).
- McKibbin, Elizabeth & Sue Scott. "Community Access to Legal Information" (2000) 8 Austl L Libr 17.
- Milbrandt, Jay & Mark Reinhardt. "Access Denied: Does Inaccessible Law Violate Human Rights?" (2012) 9 Regent J Intl L 55.
- Neogi, Prabir K. & Josie Brocca Neogi. "Broadband Adoption and Use in Canada and the US: Is the Digital Divide Closing?" (Paper delivered at the TPRC 2011, September 24, 2011), online: Social Science Research Network [ssrn.com/abstract=1983590](https://ssrn.com/abstract=1983590).
- Ng, Wan. "Can We Teach Digital Natives Digital Literacy?" (2012) 59 Computers & Education 1065.
- Nobleman, Robin L. "Addressing Access to Justice as A Social Determinant of Health" (2014) 21 Health LJ 49.
- Ononogbu, Ijeoma. "Online Dispute Resolution in Africa: Present Realities and the Way Forward" in Ernest Uwazie, ed, *Alternative Dispute Resolution and Peace-building in Africa* (Newcastle upon Tyne; UK: Cambridge Scholars Publishing, 2014).
- Pearcel, Katy E. & Ronald E. Rice. "Digital Divides from Access to Activities: Comparing Mobile and Personal Computer Internet Users" (2013) 63 J Communication 721.
- Poulin, Daniel. "Free Access to Law in Canada" (2012) 12 Leg Info Mgmt 165.
- , "Open Access to Law in Developing Countries", (2004) 9:12 *First Monday* 1.
- Rheingold, Howard. "Attention, and Other 21st-Century Social Media Literacies" (2010) 45:5 EDUCAUSE Rev 14.
- Salter, Shannon & Darin Thompson. "Public-Centred Civil Justice Redesign: a case study of the British Columbia Civil Resolution Tribunal" (2016-2017) 3 McGill J Dispute Resolution 113.
- Salvas, Bertrand. "The CanLII Project" (2000) 25 Can L Libr 184.
- Salyzyn, Amy. "A New Lens: Reframing the Conversation about the Use of Video Conferencing in Civil Trials in Ontario" (2012) 50:2 Osgoode Hall LJ 429.

- Sarkodie, Kwadwo. "Arbitration in Ghana - the Alternative Dispute Resolution Act 2010" (2011) 28:4 Intl Construction L Rev 466.
- Scassa, Teresa. "The Best Things in Law are Free: Towards Quality Free Public Access to Primary Legal Materials in Canada" (2000) 23 Dal LJ 301.
- Simple, Noel. "The Cost of Seeking Civil Justice in Canada" (2016) 93:3 Can Bar Rev 639.
- Silver, Jonathan & Trevor C. W. Farrow. "Canadian Civil Justice: Relief in Small and Simple Matters in an Age of Efficiency" (2015) 8:4 Erasmus L Rev 232.
- Sipior, Janice C., Burke T. Ward & Regina Connolly. "E-government Awareness and Visitation among the Digitally Disadvantaged" (2013) 12:1 J Internet Commerce 26.
- Teoa, Thompson S. H., Vivien K. G. Limb & Raye Y. C. Lai. "Intrinsic and Extrinsic Motivation in Internet Usage" (1999) 27 Omega, Intl J Mgmt Science 25.
- Thompson, Darin. "Creating New Pathways to Justice Using Simple Artificial Intelligence and Online Dispute Resolution" (2015) 2:1 Intl J Online Dispute Resolution 4.
- Tjaden, Theodore John. *Access to Law-Related Information in Canadian the Digital Age* (LLM Thesis, University of Toronto Faculty of Law, 2005).
- Van Laar, Ester et al, "The Relation Between 21st-Century Skills and Digital Skills: A Systematic Literature Review" (May 2017) 72 Computers Human Behavior 577.
- Van Arsdaale, Suzanne. "User Protections in Online Dispute Resolution" (2015) 21 Harv Negot L Rev 107.
- Van Deursen, Alexander J. A. M. & Jan A. G. M. van Dijk. "Toward a Multifaceted Model of Internet Access for Understanding Digital Divides: An Empirical Investigation" (2015) 31:5 The Information Society 379.
- Van Deursen, Alexander J. A. M. & Jan A. G. M. van Dijk. "The Digital Divide Shifts to Differences in Usage" (2014) 16:3 New Media & Society 507.
- Van Deursen, Alexander J. A. M. et al. "The Compoundness and Sequentiality of Digital Inequality" (2017) 11 Intl J Communication 452.
- Van Deursen, Alexander J. A. M., Jan A. G. M. van Dijk & Peter M. ten Klooster. "Increasing Inequalities in What We Do Online: A Longitudinal Cross Sectional Analysis of Internet Activities Among The Dutch Population (2010 To 2013) Over Gender, Age, Education, And Income" (2015) 32 Telematics and Informatics 259.
- Van Dijk, Jan A. G. M. van Dijk. "A Theory of the Digital Divide" in Massimo Ragnedda & Glenn W. Muschert, eds, *The Digital Divide The internet and social inequality in international perspective* (London, UK & New York, USA: Routledge, 2013).
- Velasquez, Alcides. "Digital Divide in Colombia: The Role of Motivational and Material Access in the Use and Types of Use of ICTs" (2013) 7 Intl J Communication 1768.
- Venkatesh, M. Vijay et al. "Audio-visual Privacy Protection for Video Conference" (Paper delivered at the IEEE International Conference on Multimedia and Expo, ICME 2009), online: University of Kentucky [www.vis.uky.edu/~cheung/doc/icme09\\_workshop.pdf](http://www.vis.uky.edu/~cheung/doc/icme09_workshop.pdf).
- Zorza, Richard. "Some Reflections on Long-Term Lessons and Implications of the Access to Justice Technology Bill of Rights" (2004) 79 Wash L Rev 389.
- Wandke, Hartmut, Michael Sengpiel & Malte Sönksen. "Myths About Older People's Use of Information and Communication Technology" (2012) 58 Gerontology 564.
- Weinstock, Daniel. "Cyberjustice and Ethical Perspectives of Procedural Law" in Karim Benyekhlef et al, *eAccess to Justice* (Canada: University of Ottawa Press, 2016) at 307.

## OTHER MATERIALS

- ABA Task Force on Electronic Commerce and Alternative Dispute Resolution. *Addressing Disputes in Electronic Commerce* (Chicago, USA: American Bar Association, 2002), online: ABA [www.americanbar.org/content/dam/aba/migrated/dispute/documents/FinalReport102802.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/dispute/documents/FinalReport102802.authcheckdam.pdf).
- Acosta, Joan, Patty Bossort & Diana Twiss. "Literacy Review for the Legal Services Society", (2012), online: Legal Services Society British Columbia [www.lss.bc.ca/assets/aboutUs/reports/PLEI/pleiResourcesAIRReport.pdf](http://www.lss.bc.ca/assets/aboutUs/reports/PLEI/pleiResourcesAIRReport.pdf).
- Action Committee on Access to Justice in Civil and Family Matters. "Report of the Access to Legal Services Working Group" (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, April 2013), online: Canadian Forum on Civil Justice [www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Access%20to%20Legal%20Services%20Working%20Group.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Access%20to%20Legal%20Services%20Working%20Group.pdf).
- Advisory Committee of the National Centre for Technology and Dispute. "Online Dispute Resolution Standards of Practice" (July 2009), online: Internet Corporation for Assigned Names and Numbers [www.icann.org/en/system/files/files/odr-standards-of-practice-en.pdf](http://www.icann.org/en/system/files/files/odr-standards-of-practice-en.pdf).
- Ala-Mutka, Kirsti. "Mapping Digital Competence: Towards a Conceptual Understanding" (Luxemburg: European Union, 2011), online: [ftp://jrc.es/EURdoc/JRC67075\\_TN.pdf](ftp://jrc.es/EURdoc/JRC67075_TN.pdf).
- Ayim, Kofi. "Legal Aid Scheme in Ghana Underfunded – Justice Atuguba Decries" *Amandla* (24 March 2013), online: [www.danquahinstitute.org/docs/amandla-newpaper-march2013.pdf](http://www.danquahinstitute.org/docs/amandla-newpaper-march2013.pdf).
- Benyekhlef, Karim. & Nicolas Vermeys. "ODR and the Digital Divide Scarecrow" *Slaw* (October 6, 2015), online: [www.slaw.ca/2015/08/06/odr-and-the-digital-divide-scarecrow/](http://www.slaw.ca/2015/08/06/odr-and-the-digital-divide-scarecrow/).
- Brady, Mick. "The Digital Divide Myth" *E-Commerce Time* (4 August 2000), online: [www.ecommercetimes.com/story/3953.html](http://www.ecommercetimes.com/story/3953.html).
- British Columbia Law Institute. "Technology-Assisted and Remote Evidence Presentation: A Practice Resource for BC Lawyers" (2014) British Columbia Law Institute Study Paper No. 7, online: Social Sciences Research Network [ssrn.com/abstract=2547802](http://ssrn.com/abstract=2547802).
- British Columbia, Legislative Assembly. *Official Report of Debates (Hansard)*, 39th Leg, 4th Sess, Vol 27/No 4 (8 May 2012).
- British Columbia Ministry of Justice. Court Services Branch, "Videoconferencing in British Columbia", online: Canadian Forum on Civil Justice [www.cfcj-fcjc.org/sites/default/files/docs/hosted/18536-videoconferencing.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/hosted/18536-videoconferencing.pdf).
- British Columbia, Provincial Court. "Annual Report 2015 – 2016", online: [www.provincialcourt.bc.ca/downloads/pdf/AnnualReport2015-2016.pdf](http://www.provincialcourt.bc.ca/downloads/pdf/AnnualReport2015-2016.pdf).
- Byrne, Patricia. "Public Legal Education and Information Formats and Delivery Channels" (Legal Services Society & Law Foundation of British Columbia, 2014), online: Legal Aid British Columbia [legalaids.bc.ca/assets/aboutUs/reports/PLEI/pleiFormatsAndDeliveryChannelsJuly2014.pdf](http://legalaids.bc.ca/assets/aboutUs/reports/PLEI/pleiFormatsAndDeliveryChannelsJuly2014.pdf).
- Canadian Internet Registration Authority. "CIRA Internet Factbook 2016", online: [cira.ca/factbook/domain-industry-data-and-canadian-Internet-trends/internet-use-canada](http://cira.ca/factbook/domain-industry-data-and-canadian-Internet-trends/internet-use-canada).
- Canadian Library Association. "CLA Statement on Public Access to the Internet" (2015), online: [cla.ca/wp-content/uploads/CLA\\_Stmt\\_Public\\_Access\\_to\\_Internet\\_Feb2015.pdf](http://cla.ca/wp-content/uploads/CLA_Stmt_Public_Access_to_Internet_Feb2015.pdf).
- Canadian Radio-television and Telecommunications Commission. *Communications Monitoring Report (2016)* (Ontario: Canadian Radio-television and Telecommunications Commission, 2016).

- Colledge, Mike & Michael Haight. "The Risk of Building Infrastructure Without Building Digital Literacy" *The Globe and Mail* (September 16, 2016), online: [www.theglobeandmail.com/report-on-business/rob-commentary/the-risk-of-building-infrastructure-without-building-digital-literacy/article32043633/](http://www.theglobeandmail.com/report-on-business/rob-commentary/the-risk-of-building-infrastructure-without-building-digital-literacy/article32043633/).
- Community Legal Education Ontario. "2010-2011 Report on Reach", online: [www.cleo.on.ca/sites/default/files/docs/annualreport10-11.pdf](http://www.cleo.on.ca/sites/default/files/docs/annualreport10-11.pdf).
- CorbinPartners Inc. "National Client Needs Study: Summary Report" (Canadian Legal Information Institute, 2012), online: [www.canlii.org/en/info/CanLII2012SurveySummary\\_en.pdf](http://www.canlii.org/en/info/CanLII2012SurveySummary_en.pdf).
- Court of Appeal for Ontario. "Guidelines: Teleconference and Videoconference Appearances in the Court of Appeal for Ontario" (May 1, 2017), online: Court of Appeal for Ontario [www.ontariocourts.ca/coa/en/notices/tele-video.htm](http://www.ontariocourts.ca/coa/en/notices/tele-video.htm);
- Ontario Courts Disabilities Committee. "Weiler Report: Making Ontario's Courts Fully Accessible to Persons with Disabilities" (Ontario: Courts Disabilities Committee, 2006), online: [www.ontariocourts.ca/accessible\\_courts/en/report\\_courts\\_disabilities.htm](http://www.ontariocourts.ca/accessible_courts/en/report_courts_disabilities.htm).
- Courts of Saskatchewan. "Protocol for the Use of Video Conferencing in the Court of Queen's Bench for Saskatchewan", online: Courts of Saskatchewan [www.sasklawcourts.ca/images/documents/Resources/QB\\_Video\\_Protocol.pdf](http://www.sasklawcourts.ca/images/documents/Resources/QB_Video_Protocol.pdf).
- Daabu, Malik Abass. "CJ Commissions Video Conferencing Facility to Speed Up Justice Delivery" *Modern Ghana* (August 2013), online: [www.modernghana.com/sports/485586/cj-commissions-video-conferencing-facility-to-speed-up-justi.html](http://www.modernghana.com/sports/485586/cj-commissions-video-conferencing-facility-to-speed-up-justi.html).
- Davis, Alex Smith. "California Uses Video Conferencing to Extend Reach of Self-Help Center Across Three Rural Counties" (22 June 2017), online: Self-Represented Litigation Network [www.srln.org/node/360/california-uses-video-conferencing-extend-reach-self-help-center-across-three-rural](http://www.srln.org/node/360/california-uses-video-conferencing-extend-reach-self-help-center-across-three-rural).
- Dunn, Meghan & Rebecca Norwick. "Report of a Survey of Videoconferencing in the Courts of Appeals" (Federal Judicial Center, Washington, DC, 2006), online: Federal Judicial Center [www.fjc.gov/sites/default/files/materials/2017/VidConCA\\_0.pdf](http://www.fjc.gov/sites/default/files/materials/2017/VidConCA_0.pdf).
- eEurope Advisory Group. *E-Inclusion: New Challenges and Policy Recommendations* (July 2005), online: The Knowledge Society Agency (UMIC) [www.umic.pt/images/stories/publicacoes/kaplan\\_report\\_einclusion\\_final\\_version.pdf](http://www.umic.pt/images/stories/publicacoes/kaplan_report_einclusion_final_version.pdf).
- General Secretariat of the European Council. "Guides on Videoconferencing in Cross-Border Proceedings" (Luxemburg; European Union; Publications Office of the European Union, 2013).
- Ghana Bar Association. "Scale of Fees", online: General Legal Council [glc.gov.gh/wp-content/uploads/2015/09/GBA-SCALE-OF-FEES-2015-FINAL.pdf](http://glc.gov.gh/wp-content/uploads/2015/09/GBA-SCALE-OF-FEES-2015-FINAL.pdf).
- Ghana Local Government Service. *2015 Annual Progress Report*, (March 2016), online: [lgs.gov.gh/annual-report/](http://lgs.gov.gh/annual-report/).
- Ghana Ministry of Communications & Ghana Investment Fund for Electronic Communications. "Study of The Digital Divide in Ghana: Analysis and Recommendations" (October 2013), [1e8q3q16vyc81g8l3h3md6q5f5e.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/USAID-GBI-Final-Report-Ghana-Digital-Divide-Study-FINAL.pdf](http://1e8q3q16vyc81g8l3h3md6q5f5e.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/USAID-GBI-Final-Report-Ghana-Digital-Divide-Study-FINAL.pdf).
- Ghana Ministry of Education. "Education Sector Performance Report 2016", online: [www.moe.gov.gh/site/reports](http://www.moe.gov.gh/site/reports).



- Ghana National Communications Authority. “2016 Quarterly Statistical Bulletin on Communications in Ghana: Second Quarter” (September 2016), online: [www.nca.org.gh/assets/Uploads/Quarterly-statistics-03-11-16-fin.pdf](http://www.nca.org.gh/assets/Uploads/Quarterly-statistics-03-11-16-fin.pdf).
- Ghana Prisons Service. *Ten – Year Strategic Development Plan, 2015 – 2025*, (2015), online: [www.ghanaprison.gov.gh/pdf/10%20years%20strategic%20Plan%20for%20Ghana%20Prisons.pdf](http://www.ghanaprison.gov.gh/pdf/10%20years%20strategic%20Plan%20for%20Ghana%20Prisons.pdf).
- Government of Canada. “Protect Yourself” (April 26, 2017), online: [www.getcybersafe.gc.ca/cnt/prtct-yrslf/index-en.aspx](http://www.getcybersafe.gc.ca/cnt/prtct-yrslf/index-en.aspx).
- Haba, Elena. “Selected Inventory of Initiatives to Improve Access to Justice for the Middle Class: A Working Paper for Underexplored Alternatives for the Middle Class” (Ottawa: Canadian Bar Association, 2013).
- Hughes, Patricia. “Background Paper: Developing Guidelines for Using Technology to Advance Access to Justice” (Ontario; Canada: The Action Group on Access to Justice, October 2016), online: [theactiongroup.ca/wp-content/uploads/2016/11/Background\\_Paper-Developing\\_Guidelines\\_for\\_Using\\_Technology\\_2016.pdf](http://theactiongroup.ca/wp-content/uploads/2016/11/Background_Paper-Developing_Guidelines_for_Using_Technology_2016.pdf).
- Inclusion Ghana. “Opening the Doors of Justice for Persons with Intellectual Disabilities in Ghana” (2013), online: [www.inclusion-ghana.org/resources/brochures/DRF%20Booklet.pdf](http://www.inclusion-ghana.org/resources/brochures/DRF%20Booklet.pdf).
- Justice Education Society, British Columbia. “Annual Report 2010/ 2011”, online: [www.justiceeducation.ca/sites/default/files/2010-2011%20Annual%20Report%20FINAL\\_0.pdf](http://www.justiceeducation.ca/sites/default/files/2010-2011%20Annual%20Report%20FINAL_0.pdf).
- Kilpatrick, Alan. “The Saskatchewan Access to Legal Information Project (SALI)” *Legal Sourcery* (25 May 2017), online: [lsslib.wordpress.com/2017/05/25/the-saskatchewan-access-to-legal-information-project-sali/](http://lsslib.wordpress.com/2017/05/25/the-saskatchewan-access-to-legal-information-project-sali/).
- Lachance, Colin. “Social Media and Access to Quality Legal Information” (16 March, 2014) *Canadian Forum on Civil Justice*, online: [www.cfcj-fcjc.org/a2jblog/social-media-and-access-to-quality-legal-information](http://www.cfcj-fcjc.org/a2jblog/social-media-and-access-to-quality-legal-information).
- Lenhart, Amanda et al. “The Ever-Shifting Internet Population: A new look at Internet access and the digital divide” (Washington, DC: Pew Internet and American Life Project, 2003), online: [www.pewinternet.org/files/old-media/Files/Reports/2003/PIP\\_Shifting\\_Net\\_Pop\\_Report.pdf.pdf](http://www.pewinternet.org/files/old-media/Files/Reports/2003/PIP_Shifting_Net_Pop_Report.pdf.pdf).
- Lord Just Briggs. *Civil Courts Structure Review: Interim Report* (Judiciary of England & Wales, 2015).
- Macfarlane, Julie. “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants” (2013), online: National Self-Represented Litigants Project (NSRLP) [representyourselfcanada.com/wp-content/uploads/2015/07/nsrlp-srl-research-study-final-report.pdf](http://representyourselfcanada.com/wp-content/uploads/2015/07/nsrlp-srl-research-study-final-report.pdf).
- Mathews, Julie, Sarah Rimmington & Diana Vazquez. “Public Legal Education and Information in Ontario Communities: Formats and Delivery Channels” (Community Legal Education Ontario, 2013).
- Middle Income Access to Civil Justice Initiative Steering Committee. “Middle Income Access to Civil Justice Initiative: Background Paper” (Toronto: University of Toronto Faculty of Law, 2011), online: [www.law.utoronto.ca/documents/conferences2/AccessToJustice\\_LiteratureReview.pdf](http://www.law.utoronto.ca/documents/conferences2/AccessToJustice_LiteratureReview.pdf).
- Mulgrew, Ian. “Civil Resolution Tribunal heralds the no-day-in-court future”, (December 28, 2016), online: [vancouver.sun.com/opinion/columnists/ian-mulgrew-civil-resolution-tribunal-heralds-the-no-day-in-court-future](http://vancouver.sun.com/opinion/columnists/ian-mulgrew-civil-resolution-tribunal-heralds-the-no-day-in-court-future).

Mutton, Valerie. "Poor Literacy an Obstacle to Justice" *Chronicle Herald* (4 March 2012), online: [thechronicleherald.ca/thenovascotian/69897-poor-literacy-obstacle-justice](http://thechronicleherald.ca/thenovascotian/69897-poor-literacy-obstacle-justice).

National Alternative Dispute Resolution Advisory Council. *Dispute Resolution and Information Technology Principles for Good Practice (Draft)* (March 2002), online: Government of Australia [www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/dispute-resolution-information-technology-principles-good-practice.pdf](http://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/dispute-resolution-information-technology-principles-good-practice.pdf).

Online Dispute Resolution Advisory Group. *Online Dispute Resolution for Low Value Civil Claims* (England & Wales: Civil Justice Council, 2015).

Ontario, Ministry of Attorney General. *Annual Report 2014-2015*, online: Ontario Ministry of the Attorney General [www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts\\_annual\\_14/](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_14/).

Plain Language Action and Information Network (PLAIN). "Federal Plain Language Guidelines" (May 2011), online: [www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/FederalPLGuidelines.pdf](http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/FederalPLGuidelines.pdf).

Provincial Court of British Columbia. "Affordable Access to Justice for Separating Families" (17 January 2017), online: [www.provincialcourt.bc.ca/enews/enews-17-01-2017](http://www.provincialcourt.bc.ca/enews/enews-17-01-2017).

Public Legal Education Association of Saskatchewan. "Annual Report 2011", online: [docs.plea.org/annual/2011AnnualReport.pdf](http://docs.plea.org/annual/2011AnnualReport.pdf).

Public Legal Information Association of Newfoundland and Labrador (PLIAN). "Annual Report 2010 – 2011", online: [publiclegalinfo.com/wp-content/uploads/2012/02/2010-20111.pdf](http://publiclegalinfo.com/wp-content/uploads/2012/02/2010-20111.pdf).

Quigley, Julia, Graham Sharp & Janelle Souter. "“Action” to Justice: Addressing Access to Justice in the Saskatchewan Court of Queen’s Bench" (Saskatchewan; University of Saskatchewan College of Law, 2016).

Reis Financial Solutions Inc. "Renting vs. Buying in Vancouver Analysis" *CBC Canada, British Columbia* (2012), online: [www.cbc.ca/bc/news/bc-120315-vancouver-renting-buying-analysis.pdf](http://www.cbc.ca/bc/news/bc-120315-vancouver-renting-buying-analysis.pdf).

Richards, Barbara. "Research Findings and Recommendations: Family Law in BC Website" in Legal Services Society of British Columbia, "Public Legal Education and Information Resources Accessibility Initiative" (2012), online: [www.lss.bc.ca/assets/aboutUs/reports/PLEI/pleiResourcesAIRReport.pdf](http://www.lss.bc.ca/assets/aboutUs/reports/PLEI/pleiResourcesAIRReport.pdf).

Sakyi, Kwesi Atta. "Ghanaweb Hobos, Addicts, and Commentators-Do They Observe Netiquette?" *Ghanaweb* (14 May 2012), online: [www.ghanaweb.com/GhanaHomePage/features/Ghanaweb-Hobos-Addicts-and-Commentators-Do-they-Observe-Netiquette-238920](http://www.ghanaweb.com/GhanaHomePage/features/Ghanaweb-Hobos-Addicts-and-Commentators-Do-they-Observe-Netiquette-238920).

Salter, Shannon. "The Civil Resolution Tribunal’s Next Steps" *Bar Talk* (February 01, 2017), online: [www.cbabc.org/BarTalk/Columns/Guest-Column/The-Civil-Resolution-Tribunal%E2%80%99s-Next-Steps](http://www.cbabc.org/BarTalk/Columns/Guest-Column/The-Civil-Resolution-Tribunal%E2%80%99s-Next-Steps).

-----, "How the CRT is Improving Access to Justice" (April 18, 2017), online: [civilresolutionbc.ca/crt-improving-access-justice/](http://civilresolutionbc.ca/crt-improving-access-justice/).

Saskatchewan, Ministry of Justice. *Annual Report 2015 – 2016*, online: Government of Saskatchewan [publications.gov.sk.ca/documents/9/93474-2015-16\\_Justice\\_AR\\_web.pdf](http://publications.gov.sk.ca/documents/9/93474-2015-16_Justice_AR_web.pdf).

Sehgal, Divyansha. "Chief Justice of Ghana discusses Women’s Access to Justice" *The Cornell Daily Sun* (21 April 2015), online: [www.lawschool.cornell.edu/womenandjustice/About-Us/upload/Cornell-Daily-Sun-Chief-Justice-of-Ghana-Discusses-Women-s-Access-to-Justice.pdf](http://www.lawschool.cornell.edu/womenandjustice/About-Us/upload/Cornell-Daily-Sun-Chief-Justice-of-Ghana-Discusses-Women-s-Access-to-Justice.pdf).

- Smith, Roger. "Classical Lessons from the Rechtwijzer: a conversation with Professor Barendrecht" *Law, Technology and Access to Justice* (22 June, 2017), online: [law-tech-a2j.org/odr/classical-lessons-from-the-rechtwijzer-a-conversation-with-professor-barendrecht/](http://law-tech-a2j.org/odr/classical-lessons-from-the-rechtwijzer-a-conversation-with-professor-barendrecht/).
- Statistics Canada. "Individual Internet use and E-Commerce" *The Daily* (October 12, 2011), online: [www.statcan.gc.ca/daily-quotidien/111012/dq111012a-eng.htm](http://www.statcan.gc.ca/daily-quotidien/111012/dq111012a-eng.htm).
- , "Individuals by Total Income Level, by Province and Territory (British Columbia)" (July 12, 2017), online: [www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil105k-eng.htm](http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil105k-eng.htm).
- , "Online Activities from Any Location, 2012", online: [www.statcan.gc.ca/daily-quotidien/131028/t131028a003-eng.htm](http://www.statcan.gc.ca/daily-quotidien/131028/t131028a003-eng.htm).
- , "Population and Dwelling Counts, For Canada, Provinces and Territories, 2011 And 2006 Censuses", online: [www12.statcan.ca/census-recensement/2011/dp-pd/hltfst/pd-pl/Table-Tableau.cfm?LANG=Eng&T=101&S=50&O=A](http://www12.statcan.ca/census-recensement/2011/dp-pd/hltfst/pd-pl/Table-Tableau.cfm?LANG=Eng&T=101&S=50&O=A).
- , "Individual Internet use and E-Commerce" *The Daily* (October 12, 2011), online: [www.statcan.gc.ca/daily-quotidien/111012/dq111012a-eng.htm](http://www.statcan.gc.ca/daily-quotidien/111012/dq111012a-eng.htm).
- Supreme Court of British Columbia. "Administrative Notice: Video Conferencing" (August 1, 2010), online: Supreme Court of British Columbia [www.courts.gov.bc.ca/supreme\\_court/practice\\_and\\_procedure/practice\\_directions/administrative\\_notices/AN%20-%206%20Video%20Conferencing.pdf](http://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/practice_directions/administrative_notices/AN%20-%206%20Video%20Conferencing.pdf).
- Tamara, Thomas. "Legal Research Principles and CanLII Navigation for Self-Represented Litigants" (National Self-Represented Litigants Project, 2015), online: [representingyourselfcanada.com/wp-content/uploads/2016/09/nsrlp-canlii-primer-9302016.pdf](http://representingyourselfcanada.com/wp-content/uploads/2016/09/nsrlp-canlii-primer-9302016.pdf).
- The Action Group on Access to Justice (TAG), Ontario. "Public Perceptions of Access to Justice" (October 2016), online: [theactiongroup.ca/wp-content/uploads/2015/08/Abacus\\_TAG\\_Release\\_Oct14.pdf](http://theactiongroup.ca/wp-content/uploads/2015/08/Abacus_TAG_Release_Oct14.pdf).
- The Action Group on Access to Justice, Ontario. "Technology, Inclusion and Access to Justice: Broadening the Conversation" (November 7, 2016), online: [theactiongroup.ca/2016/11/event-review-technology-inclusion-and-access-to-justice-broadening-the-conversation/](http://theactiongroup.ca/2016/11/event-review-technology-inclusion-and-access-to-justice-broadening-the-conversation/).
- The Right Honourable McLachlin, Beverley, P.C., Chief Justice of Canada. "The Legal Profession in the 21st Century" (Canadian Bar Association Plenary, Calgary, Alberta, 2015), online: Supreme Court of Canada [www.scc-csc.ca/court-cour/judges-juges/spe-dis/bm-2015-08-14-eng.aspx](http://www.scc-csc.ca/court-cour/judges-juges/spe-dis/bm-2015-08-14-eng.aspx).
- Traffic Penalty Tribunal, England and Wales. "Annual Statistics Report 2014/15", online: [www.trafficpenaltyTribunal.gov.uk/docs/TPT\\_Annual\\_Statistics\\_Report\\_14\\_15.pdf.pdf](http://www.trafficpenaltyTribunal.gov.uk/docs/TPT_Annual_Statistics_Report_14_15.pdf.pdf).
- Trebilcock, Michael. "Report of the Legal Aid Review 2008" (Ministry of Justice, Ontario, 2008), online: Ontario Ministry of the Attorney General [www.attorneygeneral.jus.gov.on.ca/english/about/pubs/trebilcock/section4.php](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/trebilcock/section4.php).
- United Nations Development Programme (UNDP). "National Human Development Report, 2015: Ghana" (2016), online: UNDP [hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/GHA.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/GHA.pdf).
- World Bank. "GDP per capita: Ghana (2016)", online: [data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2015&locations=GH&start=1960&view=chart](http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2015&locations=GH&start=1960&view=chart).



- World Bank. “GDP per capita: Canada” (2016), online:  
[data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2015&locations=CA&start=1960&view=chart](http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2015&locations=CA&start=1960&view=chart).
- “Digital Divide Include Digital Literacy in School Curriculum – Stakeholders” *Pulse* (30 April 2016), online: [www.pulse.com.gh/campus/digital-divide-include-digital-literacy-in-school-curriculum-stakeholders-id4979157.html?ajax=true](http://www.pulse.com.gh/campus/digital-divide-include-digital-literacy-in-school-curriculum-stakeholders-id4979157.html?ajax=true).
- “The Going Rate: Canadian Lawyer’s 2016 Legal Fees Survey” (June 2016), online:  
[www.canadianlawyermag.com/images/stories/pdfs/2016/CL\\_June\\_16-Survey.pdf](http://www.canadianlawyermag.com/images/stories/pdfs/2016/CL_June_16-Survey.pdf).
- “Using Technology to Create an Effective, Efficient and Expeditious Justice Delivery System” *DreamOval* (December 2014), online: [www.dreamoval.com/using-technology-transform-ghana-justice-delivery-system/](http://www.dreamoval.com/using-technology-transform-ghana-justice-delivery-system/).